

**SUPPLEMENTAL
TRANSCRIPT OF RECORD**

Supreme Court of the United States

OCTOBER TERM 1960

No. 59

FRANK COSTELLO, PETITIONER,

vs.

UNITED STATES.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

PETITION FOR CERTIORARI FILED MARCH 18, 1960

CERTIORARI GRANTED MAY 16, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

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A

No. 494—O. T. 1957

**IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

No. 24470—October Term, 1956

UNITED STATES OF AMERICA, Appellant,

—against—

FRANK COSTELLO, Appellee.

Appellant's Appendix—Filed February 21, 1957
Volume I

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[fol. 257] [folios 116a through 284a of original record]

Government's Exhibit No. 3

TESTIMONY OF FRANK COSTELLO BEFORE THE SECOND
SEPTEMBER 1943 GRAND JURY, NEW YORK COUNTY

People v. John Doe

October 13, 1943

FRANK COSTELLO, 115 Central Park West, Borough of
Manhattan, City of New York, called as a witness, having
been first duly sworn, testified as follows:

By Mr. Hogan:

Q. Now, Mr. Costello, I have not asked you to sign a
waiver of immunity, but have you spoken to your lawyer
about that?

A. Yes, sir.

Q. And on his advice, what do you propose to do with
respect to that?

A. I am not signing any waiver of immunity.

Q. You know this is a grand jury of New York County.
My name is Hogan. I'm going to ask you some questions
and Mr. Gelb, who is associated with me, will want to ask
you some questions, and you understand the significance
of the oath you have taken, don't you?

A. Yes, sir.

Q. You have appeared before grand juries before,
haven't you?

A. Yes, sir.

Q. And is it your intention to answer truthfully the
questions I'm going to ask you?

A. Yes, sir.

Q. And your lawyer has advised you as to the sig-
nificance of making false statements in a grand jury room?

A. Yes, sir.

[fol. 258] Q. Now, will you tell us how long you have
known Congressman James Fay?

A. Well, I would say about eight or ten years.

Q. And how did you meet him, Mr. Costello?

A. I believe I met him through Kenneally.

Q. Was Mr. Fay in the Internal Revenue office at that time?

A. No, sir.

Q. He did go in there afterwards?

A. Afterwards.

Q. At that time he held no political office, is that true?

A. No, sir.

Q. And did you have any dealings with him after he became the Chief Field Deputy in the Internal Revenue office?

A. No, sir.

Q. Did you ever turn any money over to him?

A. No, sir.

Q. Did you ever lend him any money?

A. No, sir.

Q. Did you ever give him any money in his capacity as an agent of the Internal Revenue Bureau?

A. No, sir.

Q. Do you hold a receipt signed by him for seven or eight thousand dollars?

A. No, sir.

Q. Now, Mr. Costello, won't you please be frank with us about that receipt because you can see that I have some information.

A. Let me explain it my way, Mr. Hogan.

Q. Sure.

A. Now, when you asked me if I hold his receipts, I don't believe I do, that is, not to my recollection. I have had receipts for paying Mr. Fay's office in my income tax, a monthly receipt, and I never took notice if it's his personal receipt.

Q. Do you still have those?

A. Well, I don't know if I have them or not.

Q. Do you recall whether one was in the amount of seven or eight thousand dollars?

A. No, sir.

[fol. 259] Q. Isn't it true that some years ago you settled a tax controversy by paying a lump sum?

A. Yes, sir.

Q. That was before or after the difficulty in New Orleans?

A. Much before.

Q. And didn't you talk to Fay in connection with that?

A. I believe I did. I made a settlement.

Q. With him?

A. That is right.

Q. Isn't it true that you were questioned thereafter about that settlement? Didn't government officials question you about that settlement?

A. No, I was never questioned.

Q. Did Mr. Fay ever speak to you about it after that?

A. Do you mean after I made the settlement?

Q. Yes.

A. After I made the settlement, I believe I spoke to one of McQuillan's men on the subject.

Q. Do you recall his name? Was it Mr. Ronane?

A. Mr. Ronane, right.

Q. What did you tell him?

A. I believe that he examined me on the moneys that I owed the government, being I had made certain arrangements to pay monthly.

Q. Did he tell you that the money you had given to Fay's office had not been credited to your account?

A. No, sir.

Q. What was his reason for questioning you about this money?

A. Well, I presume they wanted to collect a lump sum instead of the monthly payment.

Q. Wasn't it suggested to you at that time all that money had not been turned in? A. No, not at that time, no, sir.

Q. Did you ever hear from anybody that some of the money you paid for income tax had not been turned into the government?

A. Later, much later.

[fol. 260] Q. Whom did you hear that from?

A. Mr. Ronane.

Q. In what amount?

A. In the amount of about seven thousand dollars.

Q. And Mr. Ronane told you that that was money that had been received by Fay's office?

A. No, he told me if I had any doubt in my payments—if I got credited for all my payments. I told him I had no doubt, I got credited for all the payments.

Q. Did you show Mr. Ronane the receipt at the time?

A. At that time I did not have the receipt.

Q. Did you speak to Fay about it?

A. No.

Q. Now, so that, you have been friendly with Fay for a number of years?

A. That is right.

Q. Now, you recall that Congressman Sullivan was the leader of Tammany Hall until early in 1942?

A. Yes, sir.

Q. And that in February of that year, he was removed and a new leader was not selected until April of 1942. Now, isn't it true, Mr. Costello, that you were active in your friend Fay's behalf between February and April?

A. To some extent.

Q. As a matter of fact, do you recall speaking to Assemblyman Patrick Sullivan at your apartment house?

A. Yes, sir.

Q. And do you remember asking him to support Mr. Fay?

A. Mr. Fay or Dan Finn.

Q. Or Dan Finn. Will you give us the names of the other leaders with whom you spoke on behalf of Fay at that period?

A. Well, I spoke to Dr. Sarubbi, I spoke to Clarence Neal—

[fol. 261] Q. Yes.

A. I spoke to Jimmy Kelly. I believe that is all I spoke to.

Q. How about Mr. Neustein?

A. No, sir.

Q. You know him?

A. Yes.

Q. But you did not speak to him about him at this time?

A. No, I didn't know him at the time.

Q. You didn't know him at that time?

A. No, sir.

Q. How about Rosenthal?

A. To my recollection, I don't believe I spoke to him. I might have.

Q. It is possible?

A. It is possible.

Q. May we put it this way: If you had met him you probably would have spoken to him?

A. That is right.

Q. And Stand—did you talk to Stand?

A. No.

Q. Bert Stand?

A. No.

Q. How about his leader, Ahearn? Did you talk to him?

A. No.

Q. Testimony has been that Sullivan indicated to you that he would not support Fay. Is that your recollection of it?

A. That is right.

Q. On the other hand, Neal and Sarubbi and Kelly told you that they would support him?

A. That is right.

Q. How long have you known Neal?

A. Oh, about over twenty years.

Q. You and he were brought up in the same section of the City?

A. Well, yes.

Q. East Harlem?

A. Yes.

Q. And how long have you known Dr. Sarubbi?

A. Oh, I should say about five or six years.

Q. You have been to his home and visited him?

A. Just once.

[fol. 262] Q. And do you know Mrs. Sarubbi?

A. I never met Mrs. Sarubbi.

Q. And Di Salvio—how long do you know Mr. Di Salvio?

A. About twenty years also, or better.

Q. Now, was it your idea that Fay should run for the leadership? Or did he have that notion himself?

A. Fay did not ask me to support him.

Q. But you told him what you were doing, of course?

A. Clarence Neal asked me—that he was for Fay—and asked me to help.

Q. Enlisted your support?

A. That is right.

Q. But you told your friend, Fay, that you were active in his behalf?

A. Yes.

Q. And he was appreciative. He appreciated what you were doing?

A. Well, naturally.

Q. And you met from time to time to discuss his chances?

A. No, I don't believe I met him, but maybe once.

Q. During this period?

A. During the period.

Q. Now, there has been some testimony, Mr. Costello, that during this period of a month or two that there were meetings at the Waldorf and the testimony is that the meetings were with you and Neal and Stand, and possibly Sarubbi—I don't know that Fay's name was mentioned—but did you meet Neal and Stand during this period at the Waldorf? A. Well, I have met Neal very often because he shaves in the same barber shop. There is a restaurant where I used to have my lunch and it was just a casual meeting, not pre-arranged.

Q. Were others there with Neal?

A. I believe Fay had lunch there maybe once or twice.

[fol. 263] Q. And you would talk about politics? A. Not exactly. Just talk in general.

Q. But you would not avoid the discussion of politics?

A. No.

Q. And you made no secret of the fact that you were supporting Fay?

A. That is right.

Q. Now, when did you meet Mr. Kennedy?

A. Well, I know Mr. Kennedy about ten, twelve years.

Q. And do you recall how you met him?

A. The first time I met him I believe was at the race track.

Q. Yes. Who introduced you, do you remember?

A. Mr. Dooling. Jim Dooling.

Q. Jim Dooling?

A. Yes.

Q. And he was leader of Tammany Hall at one time also?

A. That is right.

Q. And you have seen him frequently since then?

A. Mr. Kennedy?

Q. Yes.

A. Well, yes, I have seen him quite often.

Q. You would see him at the race tracks?

A. Yes.

Q. And see him in restaurants?

A. Restaurants.

Q. You have had dinner with him, I suppose, from time to time?

A. Well, not time to time. I don't believe I ever had dinner with him.

Q. Would you meet him with Dooling? He was very close to Dooling.

A. At the time?

Q. Over the years, I mean.

A. Over the years, yes.

Q. But you would see him at Saratoga?

A. I don't believe I saw him in Saratoga.

Q. Did you ever have dinner with Dooling and him at any time?

A. No.

[fol. 264] Q. Who else would have dinner with Kennedy?

A. I don't believe I ever had dinner. I might have had a luncheon, I might have, but I just don't recollect having dinner with him.

Q. That you would say is about ten or twelve years ago?

A. Yes.

Q. I think Dooling was leader about 1934 or 1935.

A. Yes.

Q. So that you knew him and knew him as a friend long before he ever became leader?

A. Oh, yes.

Q. And you called him "Mike" or "Congressman"?

A. I called him "Congressman"—I called him "Mike" and when he became a Congressman I called him "Congressman."

Q. What did he call you?

A. Frank.

Q. Now, when did you have your first conversation with Kennedy with respect to the leadership?

A. Well, I just don't remember the dates but I know it was quite long before the leadership.

Q. Long before he was elected?

A. That is right—maybe a month or so before.

Q. Somewhere in the intervening period?

A. That's right.

Q. And where did you meet him at that time?

A. I believe I met him at the Madison Hotel.

Q. In the evening or at lunch?

A. At lunch in the diningroom.

Q. Was it a chance meeting?

A. It was a chance meeting. I invited him for lunch.

Q. Was anybody else present at the lunch?

A. Not that I remember.

[fol. 265] Q. And what was the conversation, to the best of your recollection?

A. His conversation was that he was a candidate, and he said to me "Can you do me any good?" I said, "In what respect?" He said, "Well, I know you know a few leaders. Maybe you can talk to them." Prior to that I had already promised Neal that I would help Fay. So I told him the truth. I said, "I am sorry, but if I can lend any help, I made a commitment with Fay through Neal."

Q. Did you give him to understand, Mr. Costello, that in the event your first commitment was no longer operative you might support him?

A. Yes, sir.

Q. Now, did there come a time before Kennedy was elected when Fay's chances dimmed out?

A. Well, no.

Q. He was a candidate right up to the end?

A. Not to my knowledge, not until the first few days before election, we would call it.

Q. Did Fay release you at any time?

A. Well, I made that—I specified in advance to Fay and Neal—I said, "Now if I can get you a few votes, if it don't do you fellows any good, I would like to see Kennedy get it."

Q. And do you remember where that conversation was when you told Fay and Neal?

A. Well, I didn't tell Fay, but I told Mr. Neal; and I believe it was at the Waldorf Barbershop.

Q. And then you say two or three days before Kennedy was elected it became apparent that Fay no longer had any chance?

A. I imagine the day before or so.

Q. And did you meet with Kennedy and the others at that time and tell them that you were turning your support over to Kennedy?

A. No, sir.

Q. You know the owner of Hogan's Irish House—Johnnie Hogan?

A. No, sir.

[fol. 266] Q. Didn't you meet—let me be specific, if I can—didn't you meet the day before Kennedy was elected at the Park Central Hotel?

A. No, sir.

Q. Did you hear of such a meeting?

A. No.

Q. You never heard of such a meeting at which it was finally decided that Kennedy was to be the leader?

A. No, sir.

Q. Well, who told you that Fay was no longer a candidate? Did Fay tell you that himself?

A. No, Fay never told me that.

Q. How did you know that it was time to release those leaders that had agreed to support Fay?

A. I never knew it until the following day of the election.

Q. Didn't you tell Sarubbi and these others that you no longer expected them to vote for Fay?

A. I told them to go along with Neal, if it is not Fay and if Neal goes with Kennedy, "you fellows go along with him".

Q. Neal was the one who was to do the deciding, as he attended these meetings?

A. Yes.

Q. And he would tell you when he met you at the barbershop how things were going?

A. That's right.

Q. Now, you saw Kennedy from time to time during this period, too?

A. Well, I have seen him a few times, yes.

Q. Did you refer to the discussion at the Madison Hotel?

A. Yes.

Q. This is before he was leader?

A. Yes.

Q. What would you say?

A. I told him—as I told him in the hotel.

Q. There was nothing new you repeated?

A. "My first choice is Fay".

[fol. 267] Q. And he said, "things are looking up to me, Frank, and maybe your second choice will win"?

A. And if Fay has no chance Neal will go for you and so will the leaders I had spoken to.

Q. Yes. Now did you attend at the Commodore or the Biltmore Hotel, I don't know just which one, on the day on which Kennedy was elected leader?

A. No.

Q. Do you remember being present at any pre-election celebration there?

A. No, sir.

Q. There was a beefsteak held at the New York Athletic Club after he was elected leader. Were you present at that?

A. No.

Q. Did you see Kennedy shortly after he was elected leader?

A. Yes.

Q. You congratulated him?

A. That is right.

Q. He thanked you?

A. That is right.

Q. Do you remember where that meeting was?

A. I just couldn't remember.

Q. It might have been one of a dozen places.

A. One of a dozen places, right.

Q. And you saw him frequently after his election as leader?

A. Well, not too frequently, maybe once a week or so. I would run into him.

Q. And sometimes appointments were made?

A. Sometimes, yes.

Q. Now, do you recall that you visited Tammany Hall in June of 1942? Do you remember Clarence Neal and Bert Stand showing you through there, meeting the telephone operator?

A. I believe I do, yes.

Q. Was that at Kennedy's invitation?

A. No, sir.

Q. Whose?

A. I had an appointment. I wanted to see Clarence Neal.

[fol. 268] Q. Yes.

A. In fact, we had a luncheon appointment and he said he's going to be in Tammany Hall and I said I would drop up and we will leave together.

Q. Were there some other people with you?

A. No.

Q. And you were shown through the place?

A. Yes.

Q. Had you been in there before?

A. No, sir.

Q. Have you been since?

A. No.

Q. Just one visit?

A. Just one visit.

Q. Now, Kennedy had your private telephone number?

A. Yes.

Q. You gave him that, when?

A. Oh, I gave it to him before he was leader.

Q. Before he was leader?

A. Yes.

Q. How did you happen to give him that?

A. Naturally the man wanted my support and he said, "Give me your telephone number in case I want to call you." I gave him my number.

Q. And did he call you from time to time and ask you whether there was any change?

A. Very seldom, but I believe he did call me a few times.

Q. And he has been at your home, has he not?

A. He has been at my home, yes.

Q. How many times would you say?

A. I would say about a few times.

Q. Do you know whether he was at your home before he was made leader?

A. He was at my home, yes.

Q. Can you recall that?

A. Well, I can recall he has been at my home.

Q. I mean the circumstances, Mr. Costello, in connection with a party or something? A. No, no party—in connection with his chances of my support.

[fol. 269] Q. This is before he was elected leader?

A. That's right.

Q. Did he come with Neal?

A. No, I believe he was alone.

Q. You have no doubt about that? He was at your home?

A. Yes, he was.

Q. Was anybody else present when he got there?

A. I believe Mrs. Costello might have been present.

Q. And of course he came to your home after he was elected leader?

A. Yes.

Q. Did you visit his office?

A. Yes.

Q. In the General Motors building?

A. Yes.

Q. How many times would you say you were there? A. Oh, I would say about twice.

Q. Not more than that?

A. No.

Q. Were they special occasions, Mr. Costello?

A. No.

Q. Have you been to his place at Peekskill?

A. No.

Q. Has he been to your place at Southold?

A. No.

Q. You have been to visit him at the New York Athletic Club?

A. No.

Q. Have you been to his home.

A. No.

Q. You have seen him at the Madison Hotel?

A. Yes.

Q. Have you seen him at the Essex House?

A. No.

Q. Let me refresh your recollection, did you meet him at the Essex House lobby on one occasion?

A. I believe I did, one occasion, yes.

Q. At the Madison Hotel how many times would you say you saw him there?

A. Oh, just a couple of times.

Q. And of course at the Waldorf, you have seen him there?

A. I saw him at the Waldorf.

[fol. 270] Q. A couple of times?

A. That's right.

Q. Now, do you recall that he visited New Orleans last winter?

A. Yes.

Q. And he told you he was going down there?

A. No, he didn't tell me he was going down there.

Q. Didn't you know that he was going?

A. No, sir.

Q. Didn't you tell your associate Mr. Kastel, that Kennedy was in New Orleans?

A. No, sir.

Q. You know that Mr. Kastel saw him there?

A. Well, now, can I tell it my way?

Q. Sure.

A. If I am not mistaken, he was in Florida at the time. From Florida he went to New Orleans and then when he got to New Orleans, then I knew, through one of the leaders, I imagine it was through Bert Stand or somebody,—he is not a leader, he is secretary—Clarence Neal or Bert Stand—that he was in New Orleans, and then I notified my associate Kastel that Mike Kennedy was in New Orleans with his Missus and “show him around.”

Q. Then Kastel did see him in New Orleans?

A. Had dinner with him.

Q. Do you know if in addition to having dinner he did anything else?

A. I think he did go to the race track.

Q. He stayed at the Roosevelt—Kennedy?

A. I imagine he did.

Q. Kastel didn't pick up the check there?

A. No, I couldn't tell you that.

Q. And you didn't pay it?

A. No, I never paid it.

Q. During this period after the election of Kennedy, you were still seeing Neal?

A. Yes.

[fol. 271] Q. And Sarubbi. By this time you had met Neustein?

A. Yes I believe I met Neustein once or twice.

Q. And you saw Rosenthal occasionally?

A. Yes.

Q. And Stand quite often?

A. That's right.

Q. When did you met Stand for the first time?

A. I met Stand after Kennedy became leader.

Q. Who introduced you to Stand?

A. Kennedy.

Q. And do you recall where that was?

A. At the Norse Grill of the Waldorf.

Q. Had you a meeting with Kennedy at that time?

A. No, they were having lunch.

Q. What did he say with respect to Stand?

A. He said “Do you know Bert Stand?”

"I knew of him but never had the pleasure of meeting him."

That was the introduction.

Q. And then you became friendly with Stand?

A. That's right.

Q. And you are still seeing Fay?

A. Well, no, I don't believe I have seen Fay, maybe once.

Q. Well, let me put it this way, Fay didn't have a quarrel with you at that time?

A. Oh, no.

Q. And you continued to see Di Salvio?

A. Yes.

Q. And all of those persons that I have mentioned voted for Kennedy so far as you know?

A. Yes, so far as I know.

Q. Now, I think you have told us that Kennedy telephoned you and conferred with you from time to time.

A. Before election?

[fol. 272] Q. Now, this is after election now.

A. Just what do you mean. What do you mean by "conferred with me".

Q. Let us put it this way: let us say in 1943 wouldn't he have occasion to speak to you? Wouldn't he have occasion to call you up and ask you for an appointment?

A. Well, he had one occasion that I can remember.

Q. Well, what one was that?

A. That I met him? He made an appointment with me and I met him in Longchamps restaurant.

Q. Even long before that, isn't it true that he called you from time to time and asked if he could meet you? For example, here is a conversation on June 24, 1943. Let me read it to you and see if this does not represent one of a number?

A. Refresh my mind.

Q. Yes.

"Kennedy: Hello Frank, how are you? I tried to get you a few times in the morning but you had left.

Costello: I tried to get you but you went to the country.

Kennedy: I am working like hell.

Costello: Yes, I see you are, Mike.

Kennedy: I'd like to see you for a minute, say, about 10:30. Is that all right?

Costello: Sure.

Kennedy: The Essex House lobby.

Costello: Okay, Mike, I'll see you there."

Now, do you recall that conversation?

A. That is in June?

[fol. 273] Q. Yes, June of this year.

A. I believe I did.

Q. Do you recall what he wanted to see you for at that time?

A. Maybe I wanted to see him. I left word for him to call me.

Q. But that is not unusual; you did see him from time to time, either he called you or you called him?

A. I don't know if I ever called him.

Q. At his office.

A. At his office I don't remember I called him.

Q. Well, if you didn't, you got in touch with him through Clarence Neal or Bert Stand?

A. Yes.

Q. There is no reason why you would not call him at the office?

A. No reason at all, just simply if I would meet Clarence Neal—"If you are going to Tammany Hall or run into Mike, I would like to get in touch with him."

Q. And he from time to time did little favors for you, isn't that so?

A. He never did a favor for me.

Q. Now, Mr. Costello, didn't he try to get a job for your nephew?

A. That contract as you would call it, I gave to Bert Stand.

Q. You knew that Kennedy was working on it?

A. Well, I didn't get it direct, so I misunderstood your question.

Q. Then getting back to the question, it is true that he did something for you?

A. If you put it that way, that is right.

Q. Although you channeled it through Stand?

A. Yes.

Q. That man's name is Pangatura?

A. That is right. He calls himself Pang.

Q. How is he related to you?

A. I believe he is a distant relative of some kind, but he calls himself my nephew.

[fol. 274] Q. You call him Pete?

A. Yes.

Q. He refers to you as uncle?

A. Yes.

Q. And he works for Judge Savarese?

A. Yes.

Q. Did you get him that job?

A. No.

Q. Well, did you introduce him to the Judge?

A. No.

Q. You were helpful to Judge Savarese last year, weren't you?

A. No.

Q. You didn't do anything for him politically?

A. No.

Q. Make any contribution to his campaign?

A. No.

Q. Did you make any contribution to Marcantonio.

A. No.

Q. Do you know Marcantonio?

A. Slightly.

Q. You have been to his club?

A. No.

Q. How long has Pete worked for Judge Savarese?

A. I imagine the last few months—three or four months.

Q. And you had nothing to do with getting him the job?

A. Yes.

Q. And you know the Judge very well?

A. I met the Judge through Pete.

Q. You met him through Pete?

A. Yes, they have been friends for years.

Q. And you spoke to Kennedy from time to time about Pete's job, didn't you?

A. Not from time to time—not Kennedy. I never spoke to Kennedy on the subject I spoke to Bert Stand.

Q. Are you sure about that now?

A. Positive.

Q. Let me read you a conversation with respect to that. This is on May 12th of this year. Pete is calling you. You say hello.

[fol. 275]—“Pete: Hello, uncle. This is Pete. I have quite a schedule for the week and I know you are tied up yourself. How about seeing you next week?”

Costello: All right.

Pete: If you run into Mike, ask him what happened in Washington.

Costello: I will see him tomorrow.

Pete: All right, Uncle Frank. I will see you on Monday of next week.”

A. Yes.

Q. Did you see Kennedy the following day?

A. Yes.

Q. But you asked Stand?

A. Yes.

Q. And he would report to you?

A. It is practically the same thing.

Q. There came a time, didn't there, when Pete got a letter that was sent to Kennedy and do you remember he told you that—this is in July—“I got a letter that was sent to Mike. I am still being considered down there, so I thought I should let you know about it.”

A. That is right.

Q. But he didn't get the position as I understand it?

A. That is right.

Q. Well, you appreciated that effort of Mr. Kennedy's in any event, even though he didn't get the job?

A. That is right.

Q. Now, you are also friendly with an assistant district attorney by the name of Loscalzo?

A. Yes.

Q. How did you meet him?

A. I met him through Pete also.

[fol. 276] Q. In the last five or six months?

A. Yes. You see they are in Long Island.

Q. And you have seen him from time to time—Loscalzo?

A. No, I probably saw him three or four times.

Q. Now, wasn't there some little favor that he wanted?

A. A favor that he wanted?

Q. Yes.

A. No, not to my knowledge.

Q. Well, now, didn't Pete keep you advised of what was going on in Queens politics and tell you what Joe Loscalzo wanted?

A. I didn't do him any favor, but I think that he wanted either to run for district attorney or something and he thought that maybe I could talk to Mike Kennedy and Mike would talk to his leader—something of that kind. I didn't pay much attention to it.

Q. Then Mike did talk to him?

A. Talk to who?

Q. Loscalzo.

A. Yes.

Q. And he talked to him at your request?

A. At my request.

Q. And you made the request directly of him?

A. To Mike?

Q. Yes.

A. Well, it came about this way. I had a luncheon appointment with Joe Loscalzo and he told me about this leadership—about this district attorney he wanted to run for district attorney, and that his leader had someone else in mind or something, and then he spoke about a county court judge. And he said "I wonder if Mike knows my leader"—his executive leader in Long Island. I said, "I don't know whether he does or not." He said, "I would like to get Mike to talk to my leader." I said, "I will call Mike up and make an appointment for you," which I did.

Q. Yes. That I think squares with some of these conversations. For example, here is one on May 29th when [fol. 277] Pete called you and says, "I guess you were wise to play golf today. Say, I found out who is behind Farrell in Brooklyn."

"Costello: Who?"

"Pete: The Bishop. Can you beat that?"

Now, would that be in reference to the county judgeship over there?

A. I don't remember the conversation.

Q. In Queens I mean. You don't recall that?

A. No.

Q. Well now, you say now: "Did you speak to that other fellow as I asked you?" And Pete says: "Yes, I did. He said 'Use all you want, but things were slightly different. I suppose I will have to get a few Irish Catholics with me.'" Does that bring anything back?

A. No.

Q. Then you say: "Why don't you drop over to the golf course and see me tomorrow?" And Pete says: "I think I will. I'll have Joe with me." That will be Loscalzo, won't it?

A. Yes.

Q. And you did see him at the golf course?

A. Yes.

Q. Then you add: "Why don't you bring the Little Judge along also?" Would that be Sayarese?

A. Yes.

Q. You say it was Loscalzo's interest to get the nomination district attorney or County Judge?

A. Yes.

Q. But you don't remember the name Farrell mentioned as candidate?

A. He might have mentioned the name but I don't remember.

Q. When you spoke to Kennedy he told you that he would see Loscalzo?

A. Yes. That is, I spoke to his secretary and made my arrangements through his secretary.

Q. You mean Stand again?

A. Yes.

[fol. 278] Q. Kennedy had told you afterwards that he had seen Loscalzo?

A. Yes.

Q. And Loscalzo told you that he had seen Kennedy?

A. Yes.

Q. And that Kennedy would do whatever he could for him?

A. Well, Kennedy told me that he couldn't do anything for him.

Q. Because it was outside his county?

A. That's right.

Q. Now, did you ask your nephew to report to you on what was going on with his work over there?

A. No.

Q. Well, let's see if we can interpret this conversation on June 22nd. He says: "Hello, Uncle Frank, I saw the little fellow." That would be Savarese?

A. That's right.

Q. "And he wanted to know when I spoke to you last.

"Costello: He must be busy in that courtroom.

"Pete: He's doing O. K. I am getting very close to him now, so I know exactly what's going on."

Was that a report that you requested?

A. No.

Q. Just reporting on how he was getting on with his work?

A. Maybe for the job. He was looking to get some sort of job.

Q. Then he asked you if you went to the dinner last night. You say no. "Did you see Mike's picture with Farley and O'Shea in the paper?"

A. No, I don't recall that conversation.

Q. See if you can remember this. "Yeah, tell the Judge I'll take him fishing before the week is out, the three of us." That would mean Judge Savarese?

A. Yes.

Q. Did you go fishing with him?

A. No.

[fol. 279] Q. "Pete: O. K. Uncle Frank, I think he would be delighted. He asked me how I liked things around here. I told him. I'm close enough to know what's going on and I am going to put the ax to some of those people." Do you recall that?

A. No.

Q. Do you know any reason why Pete should put the ax to people working with Savarese?

A. No.

Q. I suppose he meant that they might lose their jobs and he is getting somebody else in there?

A. No, I don't know what he had in mind. I don't recall it. All I know is that he was looking for a job himself.

Q. Then about this time, in July, you had occasion to meet Loscalzo. How many times would you say you met Loscalzo?

A. Maybe five times.

Q. At the golf links and other places?

A. One time at the golf links.

Q. Now, didn't there come a time when Loscalzo was interested in the leadership of Queens? Do you remember Pete saying anything to you about that?

A. No, I don't remember. He might have, but I just don't remember.

Q. Now, let me read this conversation. This is in July, Mr. Costello, July 23rd. He says: "Hello, Uncle Frank. Did you see what happened out here?" Costello: "No." Pete: "Roe went into the army and I think Joe has a chance to get in. This is our chance." Now, Roe would refer to the Democratic leader of Queens, is that right?

A. Yes, he would be the Democratic leader.

Q. And what Pete meant, with Roe in the army, it was Loscalzo's chance to get the leadership?

A. I imagine so.

Q. Did he ask you to have Loscalzo speak with Kennedy in connection with that?

A. No, sir.

Q. Do you know that Loscalzo did speak to Kennedy in connection with that?

A. He might have.

[fol. 280] Q. Did Kennedy ever tell you that that was discussed with Loscalzo?

A. No, sir.

Q. You have told us some favors Loscalzo requested, Mr. Costello. Did he ever ask you to do anything else for him?

A. No.

Q. Did you ever suggest that you could do anything for him, that you were in a position to do anything for him?

A. No.

Q. You never told him that you thought he was foolish plugging away out there in Queens in the public service?

A. I imagine one time I told him that he was foolish, that he did not retire and go in the law business.

Q. Did you offer to be of any assistance to him in that connection?

A. No.

Q. Did you know of any law business that he had?

A. No.

Q. Now, let us see another item or two about Pete and then we will forget him a little while. You got him a job at the race track in July?

A. Yes.

Q. What was it, a timer?

A. Yes, I imagine a timer.

Q. And what did you get, \$8 a day?

A. I really don't know. It couldn't have been much more.

Q. But his name was not put on the program, was it?

A. I never saw one of the programs.

Q. Who got him the job, George Levy?

A. George Levy.

Q. And you asked George to get it for him?

A. That is right.

Q. Do you recall saying to Pete on July 26:

[fol. 281] "George got you on official's job—a starter. Your name is not on the program. I thought it might conflict with the other thing. Go and see George this morning."

Do you remember anything like that?

A. Yes, I might have told him that. It might have conflicted because he was holding another job in the Surrogate's Office.

Q. So you wanted him to hold two jobs?

A. That is right.

Q. Fair enough. Now, did you speak to Kennedy also about Louis DiSalvio?

A. Who is Louis DiSalvio—Jimmy Kelly's son?

Q. Yes.

A. No.

Q. Didn't you ever talk with Kennedy and ask him to do something for him?

A. Not that I remember.

Q. Now, let me call your attention to a conversation on May 31, 1943. Do you remember Kelly was in the hospital?

A. Yes.

Q. And you called up to find out how he was:

"Costello: Hello, Jimmy. How do you feel?

Kelly: About the same. I'd like to get out of this hospital but I got to wait.

Costello: Sure, take it easy till you're o. k.

Kelly: What's new?

Costello: Doc still don't know where you are."

That would be a reference to Sarubbi?

A. Yes.

"Kelly: No.

Costello: You would think he would be wondering [fol. 282] where you are. He could call me up and ask me if I heard from you.

Kelly: He's in the country.

Costello: That's all he cares.

Kelly: I gave Louis \$40 to give him today.

Costello: I had quite a talk with that guy about your Louis.

Kelly: I hope he gets something for him."

Now, doesn't that refresh your recollection? Wasn't there something that Louis wanted that you spoke to Kennedy about or spoke to Stand about?

A. I never spoke to Kennedy or Stand about Louis.

Q. Would it be another Louis that you had in mind? Would you say it was Capozzoli?

A. No, it might be somebody that was looking for a job.

Q. Were you interested in the appointment of Mr. McNally as United States Attorney?

A. No.

Q. Didn't you talk to Kennedy about that?

A. I don't know McNally.

Q. You never met him?

A. No.

Q. You know that he is very friendly to Kennedy?

A. Well, I presume he is.

Q. Well, could you explain why you might refer to McNally as your man?

A. No.

Q. Do you want to take time to read the conversation? I tell you that in a conversation with Pete, Pete says, "Is McNally your man?" and you said, "Yes." Do you know why you might say that?

A. I don't remember saying that, and if I said that, [fol. 283] I might have reference that he is a Tammany Hall man or something.

Q. In any event, you have never met him?

A. I have never met him.

Q. Now, Neal and Stand have been to your apartment, haven't they, Mr. Costello?

A. Yes.

Q. Did you ever have any business dealings with Stand at all?

A. No.

Q. Any business dealings with Neal?

A. No.

Q. So that any conversation you had would either be social or political?

A. That is right.

Q. Did you attend any political affairs?

A. No.

Q. Didn't you go to Webster Hall in June?

A. Oh, yes, the beefsteak—Jimmy Kelly's Beefsteak.

Q. Didn't you also go to Rosenthal's Beefsteak?

A. You say June? Wait a minute now.

Q. Kelly's was January, Rosenthal's was June.

A. It was the first one I really ever went to.

Q. Didn't you go to the one in June, also?

A. That is a ham and cabbage.

Q. And whose guest were you?

A. I believe a fellow by the name of Irving Sherman.

Q. Wasn't it Congressman Klein?

A. No.

Q. Don't you remember Congressman Klein calling you from Washington and inviting you to go?

A. But I wasn't his guest. I was the guest of Irving Sherman.

Q. But the Congressman did call you and tell you about it and asked you to be there?

A. Yes.

Q. Who else was at the table with you?

A. Irving Sherman, myself and two other people that were with Irving Sherman; I don't recollect their names.

[fol. 284] Q. Nat Hershfield-And Klein, wasn't there?

A. He was there, but not at that table.

Q. Now, from time to time during the early months of this year—March, April and May—persons were coming to you with respect to political difficulties, particularly with primaries. Isn't that so?

A. No.

Q. Do you remember a man by the name of George Greer coming to you?

A. George Greer?

Q. Yes. Do you remember Frank Hale speaking to you about a Tammany leader named Greer?

A. Yes.

Q. And Greer came to you and told you that Kennedy was easing him out and asked you to do something about it?

A. No, Greer didn't tell me that.

Q. What did he tell you.

A. Frank Hale told me that.

Q. You did see Greer?

A. I saw Greer, yes.

Q. And he told you pretty much the same thing, didn't he? I mean, didn't he repeat the story?

A. I believe I saw Greer after he was defeated, or something. I don't remember seeing him before the primaries. I never knew Greer.

Q. I know that, but you knew Hale?

A. Frank Hale, yes.

Q. And Hale brought Greer to you?

A. Yes.

Q. And Hale brought Greer to you, because he had heard that you knew Kennedy well and were influential with Kennedy, isn't that so?

A. That is right.

Q. Then you told Greer to see Kennedy?

A. That is right.

Q. And then you reported back to Hale that nothing [fol. 285] could be done for Greer, isn't that right?

A. I believe I did, yes. It was a local fight and that Kennedy must have said that nothing could have been done for him.

Q. See if this does not refresh your recollection. It is a conversation between you and Hale:

"Costello: Did that fellow get in touch with you?

Hale: He just finished talking to me and I told him what you said. He said that Mike took it away and put your man, Rosenthal, in."

Now, that would have reference to his job in the Board of Elections?

A. I never knew Greer was in the Board of Elections.

Q. Well, in any event, you know who Rosenthal is?

A. Yes.

Q. And if I told you that Rosenthal is presently working in the Board of Elections and that Greer used to work there and then lost his job, the chances are that this sentence refers to that situation; isn't that so?

A. No, I don't believe so.

Q. Well, what do you think it refers to?

A. I never knew that Greer worked in the Board of Elections.

Q. Let me read what you said.

A. Yes.

"Costello: Why shouldn't I, as this fellow is a rebel and my man was in line? What does he care about Dunn? Dunn wouldn't do a thing for him. Can you have him at your room about four o'clock tomorrow afternoon?"

Now, you explain that in your own way.

A. The only way I can explain is that it was near Primary and this fellow Greer, which I never met in my life— [fol. 286] Q. You mean you had never met him before that?

A. I had never met him before that—and he had a fight on hand. So Frank Hale, which I have known for many years, called me, for me to meet him. I met him and he explained the situation. He said this fellow was a buddy of his, could we do anything for him. I said, "There is nothing I can do for him. I don't know a captain; I don't even know his district." He said, "Well, maybe you can talk to Mike." I said, "Well, I will talk to Mike," and I spoke to Kennedy. I said, "Do you know Greer?" He said, "Sure I know him." I said, "He has a fight. Now, Frank Hale came to me and asked to sort of favor him, because he is a friend of his." He said, "I can't do nothing. There is a local fight and I can't butt in. Anyway, he is a rebel and it wouldn't look nice for me to do anything."

Q. You were pretty much repeating to Hale what Kennedy told you; why should he. Because this fellow is a rebel?

A. That is right.

Q. What do you mean when you say, "Dunn wouldn't do a thing for him." Does that have reference to Philip Dunn, the lawyer who was opposed to Kennedy?

A. That is right.

Q. And Kennedy probably told you that Greer was on Dunn's side?

A. Something, I don't remember.

Q. Here we have another reference to Dunn, in a conversation of June 10th, and this is from Fay I presume. Correct me if I'm wrong.

"Fay: Hello Frank. How's things?

Costello: Perfect.

[fol. 287] Fay: I saw Mike last night and I saw Dunn also.

Costello: I saw Frank yesterday. He had a couple of bad days at the track. He felt bad."

Would that be Ericson?

A. Will you read that over again, please?

Q. Yes. This is a conversation between you and Jimmy.

"Jimmy: Hello, Frank, how's things?

Costello: Perfect. I saw Mike last night and I saw Dunn also. I saw Frank yesterday. He had a couple of bad days at the track. He felt bad.

Jimmy: What can you do? Say, Frank, I'd like to have lunch with you.

Costello: I am very, very busy. I'm waiting for a fellow to pick me up now. Suppose some day next week.

Jimmy: Fine. I'll get in touch with you."

Could that be Fay or DeSalvio?

A. It could be Fay or DeSalvio, but I never mentioned Dunn.

Q. This must have been my mistake. It was Jimmy who said, "I saw Dunn last night."

A. Oh.

Q. Would you say that this was DeSalvio that you had this conversation with?

A. Probably.

Q. Does Fay know Ericson?

A. I suppose so.

Q. You know Ericson?

A. Yes, sir.

Q. Do you go with him frequently?

A. Yes.

Q. See him often?

A. Quite often.

Q. Well, now then, to that extent you did have some interest in the Greer difficulty. Now, how about Neustein? Did you have any interest in his primary fight?

A. No.

Q. Do you recall telling Rosenthal that, "We will have [fol. 288] to do something with Danny Neustein"?

A. I might have but I just don't remember.

Q. Well, you know Joe Biondo very well?

A. I know him but not any too well.

Q. You know he is influential in Neustein's district?

A. I know he's interested in that.

Q. Well, he comes from that general neighborhood?

A. Yes.

Q. Isn't it true that you told Biondo to help Neustein?

A. No.

Q. Are you sure of that?

A. Positive.

Q. Did you tell anybody to pass the word on to Biondo to help Neustein?

A. No.

Q. Or to help Rosenthal?

A. No, not to my knowledge.

Q. But you might have said to Rosenthal, "We will have to do something to help Danny Neustein."

A. I might have, but I just don't recall.

Q. Now, how about Mancuso? Did you talk to Kennedy about Mancuso?

A. No.

Q. You know Mancuso?

A. Yes.

Q. Didn't you aid in his selection at all?

A. No, sir.

Q. Didn't Neal speak to you about Mancuso?

A. Yes.

Q. And Stand?

A. No, Neal.

Q. Didn't he ask you whether you thought Mancuso would be a good leader?

A. Yes.

Q. What did you say?

A. I said, "Well, I've known Mancuso for years, even before he was a judge. I think he would make a good leader, yes."

Q. Did you know Hubbard?

A. Yes.

Q. Did you speak to Hubbard in connection with his retirement?

A. No.

[fol. 289] Q. Did Neal pass on your word to Kennedy about Mancuso?

A. I believe Neal spoke to Kennedy.

Q. Did Kennedy say anything to you about it?

A. Well, he spoke to me about it and he said, "It is a local fight. Let the best man win."

Q. Did he say, "Frank, I understand you have known Mancuso for a long time"?

A. He didn't have to ask me. They all know I know the man.

Q. Did you do anything to help him up there?

A. Nothing.

Q. Did you tell Neal to pass it on to the others?

A. I didn't tell Neal to pass it on. He came to me.

Q. And he asked you?

A. Yes.

Q. And you approved?

A. Yes.

Q. Now, during this period—and we are now speaking of May and June of this year—you were still in touch with Sarubbi?

A. Yes.

Q. And as a matter of fact, he was good enough to telephone to California several times to ascertain how a friend of yours was getting along?

A. That is right.

Q. And that is Willie Moore?

A. That is right.

Q. And you were instrumental in sending Moore to California, weren't you?

A. No.

Q. You knew he was going there?

A. Yes, his doctors told him to go away.

Q. He called you any number of times from California?

A. Yes.

Q. And you asked Dr. Sarubbi to call up and ascertain whether Willie was normal or not?

A. That is right.

Q. Your doctor is Lordi?

A. John Lordi.

Q. You have never used Sarubbi as a doctor?

A. Yes.

[fol. 290] Q. What for?

A. I had Sarubbi as a doctor because I had a fistula, whatever you call it.

Q. How long ago was that?

A. It is about a year and a half ago. And he treated my throat and he is the one that brought me to Dr. Lordi.

Q. Then wasn't it some time in July that Dr. Sarubbi became ill?

A. Yes.

Q. Do you recall Jimmy Kelly telling you that the Doctor had a bad case of arthritis?

A. Yes.

Q. And you asked what his number was and you telephoned there?

A. That is right.

Q. And you spoke to some woman? See if this does not refresh your recollection. You asked for Dr. Sarubbi and a woman answers:

"The Doctor is sick and is in bed. He can't talk to anybody.

Costello: Will you tell him that Frank called and tell him if he needs anything to get in touch with me. Also ask him to call me as soon as he is allowed to phone."

Woman: Thank you very much for calling.

Costello: I would have called sooner only Jimmy Kelly just told me. Give him by best."

Do you recall that conversation?

A. Yes.

Q. And you told the woman, who was probably Mrs. Sarubbi, if he needed anything to let you know?

A. Yes.

Q. He was a good friend of yours, wasn't he?

A. That is right.

[fol. 291] Q. You never tried to get him removed as a leader at any time, did you?

A. Well, that is—not that I tried; it is a different story.

Q. Who tried?

A. Well, I believe Mike Kennedy.

Q. Tried to get him out?

A. Wanted him removed.

Q. Why?

A. Well, he was sick, and he told me that the district was going to hell, and he didn't have the nerve to tell him himself. "He is your doctor and a good friend of yours. Maybe you can break the news to him and it won't look so bad for me, to talk on the subject in front of the other leaders. He probably won't like it."

Q. When did you see Kennedy last?

A. I saw Kennedy about a week ago.

Q. Did you do anything in connection with this?

A. Did I?

Q. Yes.

A. No, nothing. We have had the conversation but nothing was done. The man was sick. I never spoke to the doctor on the subject. He is still sick.

Q. Do you know whether Kennedy has spoken to him about it?

A. No. I don't believe so.

Q. Now, this business of politics was taking more and more of your time?

A. Well, it wasn't taking much of my time.

Q. Do you recall telling Mr. Kastel that you couldn't go to New Orleans because you were tied up on account of the election?

A. I might have told him that, yes.

Q. Well, if you told it to him it would have been the truth?

A. No. I probably might have used it as an excuse.

Q. This is your associate and your partner?

A. That is right.

[fol. 292] Q. You would not have deceived him?

A. It is not a case of my deceiving him, it is just a case of my not wanting to go there too often.

Q. There is a long conversation one line of which interests me: Kastel tells you they are going to send the old masters to England and reproduce them. What is that in reference to?

A. The old masters?

Q. That they were going to send the old masters to England and reproduce them.

A. No.

Q. Do you know of any such deal.

A. No.

Q. Do you recall that conversation?

A. No, I don't recall it.

Q. This is the conversation which starts out this way:
You ask—

“Did Jim get there?

Kastel: Yes, yesterday.

Costello: Those people who got our office—well, this fellow and the other fellow who is supposed to be our friend is President.

Kastel: He came back with his chin down.

Costello: In the meantime I loaned him a yard and a half.”

Do you recall that?

A. Did he say “Jim”?

Q. Yes.

A. Well, it happens to be, I know Gene McGee.

Q. That's Fallon's partner?

A. Yes.

Q. You did lend him \$1500?

A. No, a yard and a half is \$150.

Q. Forgive my ignorance. And was Gene going to New Orleans?

A. Yes.

[fol. 293] Q. Is he working for you?

A. No.

Q. He does come to your apartment occasionally?

A. To my apartment?

Q. Yes.

A. When he is in New York, yes.

Q. What was he doing in New Orleans?

A. I believe he is in the oil business, in Shreveport.

Q. And then there is another reference in the same conversation to things being very quiet:

Kastel says: “Outside of that, things are very quiet. Only a big week-end business. Last week end the places had to close. No ice to keep the beer cold.”

That would have reference to the slot machines?

A. To our business, yes.

Q. But you don't recall anything about the "old masters"?

A. It might have reference to McGee.

Q. You would not be sending him to England?

A. No.

Q. "They are going to send the old masters to England and reproduce them"?

A. No.

Q. But you do look upon him as an old master?

A. He is, yes.

Q. Now, of course, you were interested in the primaries. I think Primary was on August 10. Now, you did get away before August 10. Do you recall coming back on August 11, the day after Primary?

A. Shortly after, yes.

Q. And do you remember Bert Stand calling you up early on the morning of August 11, Wednesday, and giving you a report as to what happened on Primary Day?

A. He might have.

Q. Do you remember what he told you?

A. No.

Q. Do you remember him telling you "we will have to sit down and plan now"?

A. No, I don't remember. He might have.

Q. Let me just read the conversation. This is at twenty minutes to nine on August 11, 1943, the day after Primary Day:

"Stand: Hello.

Costello: Hello, Bert.

Stand: Hello, Frank, how are you? How was the trip?

Costello: O. K. What's new?

Stand: Well, the Primaries are over.

Costello: Did we do all right?

Stand: Pat Sullivan and Danny Mahon won. Dickinson beat Burroughs. And Thompson won. That's about all.

Costello: We got the best of it!

Stand: I'd say yes. We will have to sit down and plan now. I spoke to Clarence and he said he spoke to you. We will have to sit down, Frank.

Costello: I think I will call Clarence now. What's that number?

Stand: Lehigh 4-2556.

Costello: I will call him now and make arrangements.

Stand: O. K., Frank.

Costello: So long."

[fol. 295] Q. Now, you recall that conversation don't you?

A. Well, that conversation might have taken place, I am quite sure, and I might have been inquisitive to know. Naturally, I am a Tammany Hall man. I am ready to get some results.

Q. And you said: "Did we do all right?" You mean Kennedy and you and Stand and Neal and the rest of the group that had been together, isn't that right?

A. Well, yes.

Q. And when you said: "We got the best of it" you referred to the same group?

A. That is right.

Q. Now, what did you mean, and explain it in your own words—what did Stand mean to convey when he said "We'll have to sit down and plan now"?

A. I don't remember even. I don't remember that at all.

Q. You said it twice. Wouldn't you have some occasion to sit down and plan?

A. I don't know what the occasion would be.

Q. Let me point this out. This was on August 11th and the Judicial Convention was Monday, August 23rd. Doesn't it suggest that you and he and Neal and Kennedy would have to sit down and plan with respect to the Judicial Convention? Is that what it meant? "Sit down and plan now."

A. No, I don't believe it was that at all.

Q. The fact is that you did have many conversations about the judges after that, didn't you?

A. About the judge.

Q. After this, do you remember how Stand would come

to you and tell you how Mike was thinking of Byrnes and Gavagan and Raimo?

A. Yes, that is right.

Q. Doesn't that refresh your recollection, Mr. Costello, and doesn't it mean that you and Clarence and Kennedy and Stand would have to sit down and plan about the [fol. 296] Judicial Convention and the other political matters that were immediately in the offing?

A. I don't know. I wouldn't have no business to sit down with him.

Q. But you did all along, didn't you?

A. Well, no, I wouldn't say all along. I am not denying, Mr. Hogan, that I didn't pull for the Judge, but as far as sitting—I know less of politics than my maid does.

Q. Well, you probably don't know the details, but you know the big things that are going on, isn't that true? What did you mean when you said: "I will call Clarence now and make arrangements." Didn't you mean that you were going to make arrangements for a meeting between you and Stand and Neal to talk about these things?

A. Well, no, I wouldn't put it that way.

Q. Well, you did call Clarence right after that, about three minutes later. You did put in a call, and I will read it to you.

"Costello: Hello, Clarence. This is Frank.

Neal: When did you get in?

Costello: Late last night. I was coming in by train and at the last minute I got a seat on a plane. How are things?

Neal: O. K. I will see you down there.

Costello: O. K. Clarence."

Didn't he mean the Waldorf? Did it?

A. It might have meant the Waldorf.

Q. And that was the first step you took after receiving the call from Stand with respect to sitting down and planning with somebody, isn't that so?

A. I don't know what you mean by that "planning".

Q. Well, talking. Talking with him, talking or discussing what was next.

A. Maybe talking.

[fol. 297] Q. Here Stand reported to you that "We did all right. Our man won." Now you and Stand and Kennedy and Neal were going to sit down. "All right, we won that battle. Let's talk over the next one." Isn't that true?

A. No, sir, that wouldn't be true because I wasn't interested in the next battle.

Q. Why did you say: "I think I will call Clarence and make arrangements." You didn't ask Stand what he meant by that, did you? You didn't say: "Bert, what do you mean, sit down and plan now"?

A. No, I don't believe I asked him that.

Q. Then you understood what he meant, didn't you?

A. Well, I don't deny the gist of the conversation, but I will deny "sit down with him to plan".

Q. Would you deny that you sat down and talked about the judicial ticket?

A. I might have.

Q. You have been very frank so far, Mr. Costello, and I want to compliment you.

A. I know.

Q. And I think you are pursuing a very wise course, and I want you to continue to be frank with me. Will you do that?

A. Well, I am trying to.

Q. Now, Stand and you and Neal and others were interested, very frankly, in Mr. Aurelio for Supreme Court Judge, isn't that so?

A. Yes.

Q. And all of you have done things in the preceding months of 1942 to bring that about, isn't that so? You had talked to persons and you had met him?

A. That is right.

Q. And tried to do everything you could for him. Who was the first to suggest Aurelio's name to you?

A. Dr. Sarubbi.

Q. And when was that, to the best of your knowledge? [fol. 298] A. The first time I met Judge Aurelio was at Jimmy Kelly's Beefsteak. I was introduced to him.

Q. Who introduced you to him?

A. Dr. Sarubbi. About a week or ten days later, I imagine, he said to me "I understand they are going to put

an Italian on the ticket. Aurelio will make a good judge. He has a fine record, a war veteran, a District Attorney, a judge, he is a very good friend of mine and I am going to pull for him." Now he said, "If you see Mike, if you can put in a good word, I wish you would. You can also talk to Kelly." I said: "I will do that, Doc."

Q. And you did speak to Kennedy?

A. Yes, and I spoke to Kennedy, and I spoke to Clarence Neal.

Q. What did you say to Kennedy?

A. I said: "Mike, if you are going to put an Italian on the ticket I understand Judge Aurelio, Sarubbi is interested in him. He comes from Abe Rosenthal's district. I wish you would give him a little consideration."

Q. Was this shortly after the Beefsteak?

A. Yes.

Q. And you had met Aurelio at the Beefsteak?

A. At the Beefsteak for the first time.

Q. Did you have a conversation with Aurelio at the Beefsteak?

A. No conversation at all.

Q. Was it Sarubbi who introduced you to him.

A. I believe it was Sarrubi.

Q. Then shortly after that, by reason of Sarubbi's request, you talked to Kennedy and urged him to consider Aurelio?

A. That's right.

Q. What did Kennedy say?

A. Kennedy said "I will think it over. It is early."

Q. Then you spoke to Neal?

A. Yes.

[fol. 299] Q. What did Neal say?

A. He said "Aurelio is a nice man. I will talk to Kennedy".

Q. What did Kelly say?

A. Also that he would talk to Kennedy.

Q. Didn't Mr. Kelly have a candidate?

A. Jimmy Kelly, no.

Q. Capozzoli?

A. No.

Q. Are you sure that he didn't advance Capozzoli's name?

A. No.

Q. How can you be so certain?

A. He never mentioned Capozzoli to me.

Q. He agreed to go along?

A. To go along with Aurelio.

Q. Now did you speak to Neustein about Aurelio?

A. No.

Q. You spoke to Stand?

A. To Stand, yes.

Q. Did you ask him to speak to Ahearn, his district leader?

A. Well, spoke to Stand; I thought that he would talk to Ahearn. He practically represents the district there.

Q. Did you speak to any other leaders?

A. Abe Rosenthal.

Q. Well, I guess you didn't have much trouble in persuading him.

A. No, Abe Rosenthal asked me. He said "I have a candidate." I said, "I know all about him. Dr. Sarubbi talked about him and I am going to do what I can."

Q. Do you recall any others that you spoke to?

A. No.

Q. How about Fay? Did you speak to Fay?

A. No.

Q. You didn't ask him?

A. No.

[fol. 300] Q. Why?

A. Well, I just probably didn't think of it, and I thought—

Q. He might have a candidate of his own?

A. Well, maybe I might have had that in mind.

Q. Did you find out that he had a candidate of his own?

A. There was a rumor around that he had a chief City Court Judge Byrnes.

Q. Do you know a clothing manufacturer by the name of Sam Greenberg?

A. No.

Q. Heard his name?

A. I read his name in the paper for the first time.

Q. A friend of Aurelio's? You didn't meet him?

A. I never heard of him or saw him. For the first time, in the papers.

Q. Did Judge Savarese speak to you about Aurelio?

A. Yes.

Q. And Loscalzo?

A. Yes.

Q. Both of them told you they knew him?

A. They are very good friends and he would make a fine judge.

Q. They talked to you about him and urged you to support him?

A. Yes—"If you could do something for him and speak to a few leaders."

Q. When did you see Aurelio after the beefsteak? When was the next time you saw him?

A. After the beefsteak? I know he was to my home for cocktails. I just can't place the dates now. And we had dinner.

Q. Was that before or after the time you met him in Mike Kennedy's office?

A. That is right, Mike Kennedy's office.

Q. Was that the next time?

A. No, I think that was the second time if I am not mistaken.

[fol. 301] Q. Yes, in the office?

A. In the office.

Q. And how did you happen to be there?

A. I was in the barber-shop getting a shave, which I went there frequently, and Neal was there, and he says "You are going west?" I said "Yes," and he said "I am going up to Kennedy's office." I said, "I will ride along with you." When I got there, I said, "I have a little time. I will jump up for a few minutes," and I met Aurelio there and Abe Rosenthal.

Q. Sarubbi?

A. And Sarubbi.

Q. Well, now didn't you know that Aurelio was going to be there that afternoon?

A. No.

Q. Was that the first time that you been to Kennedy's office?

A. I believe it was the second time.

Q. What brought you there the first time?

A. Probably to meet Clarence Neal. I might have had an appointment.

Q. You didn't go there often?

A. No, I don't believe I have been there three or four times.

Q. And it just happened that you were there on the one day that the man you were so much interested in was there?

A. That is right.

Q. Didn't you think that a surprise and a coincidence?

A. Yes, I was surprised to run into them.

Q. What was said while you were there?

A. Well, I don't remember exactly the conversation what took place, but I know Abe Rosenthal, naturally he had a candidate and he was talking to Mike.

Q. This was in your presence?

A. No. I was there maybe 15 minutes, 10 minutes and left just near the finish of it.

Q. They didn't ask you to step outside because you were [fol. 302] not a district leader?

A. No, but they were practically all through talking.

Q. You participated in the conversation?

A. No.

Q. Didn't you say to Mike "You recall that I spoke to you in favor of Aurelio?"

A. I might have said that, yes.

Q. What did you say to Aurelio himself?

A. Nothing outside of "Hello, Tom." I called him by his first name.

Q. No, but didn't you have a conversation with him about his ambition to be a Supreme Court Judge? He must have known by this time that you had been speaking to people on his behalf?

A. Yes, he knew it through Rosenthal.

Q. And didn't he thank you?

A. Yes.

Q. Tell us what he said. That is all we want to know.

A. I just don't remember the words. He must have thanked me and "Appreciate whatever you can do for me."

Q. By that time had the nomination been assured him?

A. No.

Q. Kennedy didn't say on that occasion "that you have it solid", did he?

A. No.

Q. Did he say it was early and he would keep considering it?

A. Yes.

Q. Did you tell Judge Aurelio at that time that you were going to continue to work for him?

A. That is right.

Q. You were going to do everything you could do to help him?

A. That is right.

Q. Whom did he come in with, by the way? Was it Rosenthal or Sarubbi?

A. I found him in there.

Q. He was there when you got there? Whom did he leave with?

A. I beg pardon?

Q. Whom did he leave with?

A. With Rosenthal.

[fol. 303] Q. And you told him that you were going to continue to work with these leaders?

A. Yes, I might have told him that.

Q. Then he was a guest at your home shortly after that, is that right?

A. That is right.

Q. And who else was present?

A. Clarence Neal, Mrs. Neal, Abe Rosenthal, Mrs. Rosenthal.

Q. Now, how did that come about, that you had him at your home? You hadn't done this before, had you?

A. No. I met Rosenthal and when I told him that I was doing all I could for the Judge, he says, "Well, you should know him better. He is a real fine fellow." I said, "Some evening I will have you up at my home and we will have dinner." And I don't know, it was three or four days later and I called him or he called me, and I said "Come on and bring the Judge and Mrs. Aurelio."

Q. You did have cocktails at your home?

A. Yes.

Q. Did you have some conversation there also?

A. Not politically, no.

Q. Where did you go from your home?

A. We went to the Copacabana. I called up and made reservations for dinner.

Q. And you were there for several hours?

A. Yes.

Q. And you told him during that period—

A. We never spoke politics.

Q. You never brought up the subject?

A. No.

Q. Rosenthal, his leader, was there and he didn't speak about politics?

A. No, not that I recall anyway.

Q. Did he say at any time during the evening that you were interested and that you were doing what you could and he appreciated it?

A. Not that I can recall.

[fol. 304] Q. And there is no doubt in your mind that both Aurelio and Rosenthal knew at this time that you were active in Aurelio's behalf?

A. That is right. I was plugging for him.

Q. And plugging with district leaders?

A. That's right.

Q. And with Kennedy?

A. That is right.

Q. No secret about that at all?

A. No, there is no secret about that.

Q. Then you saw him at Rosenthal's daughter's wedding?

A. That is right.

Q. Did you talk to him there?

A. Just for a few minutes. There were a lot of people there.

Q. That was in March also, wasn't it?

A. Yes. I know very well because I was leaving the same afternoon for the South.

Q. And did you see Aurelio in town at the cornbeef and cabbage dinner of Rosenthal?

A. Yes, just for a minute or two.

Q. He asked you very frankly what you thought his chances were, didn't he?

A. Yes. Well, I wouldn't say at that particular meeting.

Q. But somewhere along in March at one of these meetings.

A. Yes.

Q. Did you speak to him on the telephone also?

A. I believe I spoke to him once on the phone.

Q. Once before the Convention?

A. Yes.

Q. Wouldn't he discuss with you other Italian names that were up for consideration?

A. No, he never did.

Q. Would he say to you, "Well, how does it look for me?"

A. Yes.

[fol. 305] Q. And Rosenthal would say that, too?

A. Well, yes, he would.

Q. Didn't you see Rosenthal from time to time and didn't he ask you how Aurelio's chances were shaping up?

A. No, I wouldn't say that. I saw him from time to time; I ran into him, no special meeting or occasion of any kind. I would run into him in the barber-shop, and he would say "How is it coming along?" I said "What he should do is—Does he belong to societies?—all the help he needs. Plenty of help."

Q. He needs plenty of help?

A. Yes.

Q. You aren't a society man yourself?

A. No.

Q. You couldn't influence any societies?

A. No.

Q. You didn't tell him that you could influence any societies?

A. No.

Q. You told him—

A. I had a few leaders that would go along with me.

Q. You didn't tell Aurelio that you could get societies to support him?

A. No.

Q. When Aurelio asked you what his chances were, what did you say to him?

A. Well, I told him I thought his chances were very good.

Q. And that was after speaking to Kennedy?

A. Yes.

Q. And then you told him that Kennedy had indicated to you that he thought highly of Aurelio?

A. That is right.

Q. And you told that to Aurelio?

A. That is right.

Q. Now, Sarubbi would also talk to you from time to time about Aurelio, would he not?

A. Well, he hadn't much chance—the man has been sick. [fol. 306] Q. I mean before July.

A. Yes, he spoke to me a few times.

Q. And he would urge you to do what you could for his friend Aurelio?

A. That is right.

Q. Now, we have a conversation, Mr. Costello, a week before the Judicial Convention between you and Rosenthal. I will read it to you:

"Rosenthal: Hello, Frank. This is Abe Rosenthal.

Costello: Hello, Abe, how are you?

Rosenthal: Fine. It's getting pretty close to the big race. You know, the Kentucky Derby. I thought I'd say hello. I don't like to call you early in the morning over there as it has to go through two or three people. Have you got a minute today?"

And then you make an appointment to see him. You say:

"Costello: Make it at 1:00. I have to meet the chief."

Would the "Chief" be Kennedy?

A. Who made the call?

Q. Rosenthal.

A. To me?

Q. Yes.

A. I don't remember that conversation at all.

Q. Do you remember seeing Rosenthal a week before the Convention? Did you see him in that period?

A. I might have seen him.

Q. And he discussed Aurelio?

A. Yes.

Q. Is it your recollection, by the way, that by "Ken-[fol. 307] tucky Derby" he meant the Judicial Convention?

A. Yes, I understand, but I don't remember his using that expression.

Q. But the Kentucky Derby is run in the Spring, isn't it?

A. Yes.

Q. So that if he did use that expression—if a district leader used that expression, might it not have conveyed to you that he was talking about the Judicial Convention? Since that was only a week off?

A. Yes.

Q. He was, of course, pulling for his candidate Aurelio in that race.

A. That is right.

Q. And that is what you and Neal and Stand and the others were pulling for also?

A. That is right.

Q. And isn't that what they were sitting down and planning or discussing?

A. We never sat down in a group just to discuss it.

Q. But you were talking about it.

A. Well, I spoke about it, sure.

Q. And Stand and Neal and Sarubbi and Kelly and Rosenthal were talking.

A. Right.

Q. About "How's Tom doing? Do you think Tom is going to get it?"

A. On different occasions when we would meet individually, but there was never a group meeting on the subject.

Q. But you would meet one and you would meet two?

A. That is right.

Q. Now, you testified before you went to Dr. Sarubbi on one occasion to his apartment house.

A. Yes.

Q. And wasn't that in connection with Aurelio?

A. No, no; he was sick.

[fol. 308] Q. But you went?

A. To visit him as a sick man. I never discussed Aurelio with him.

Q. You discussed Aurelio every place else with him.

A. Yes, but when I seen him at his home, he couldn't discuss nothing with me. He could hardly talk.

Q. Did you go there to discuss anything with him?

A. No.

Q. Now, let me read you this conversation, Mr. Costello. August 12th. And I know that he has been well enough to talk with persons in the last month or so. He has been sick but he is well enough to do some talking:

"Sarubbi: Hello, Frank, this is Dr. Sarubbi.

Costello: Hello, Doctor. Do you feel any better?

Sarubbi: Not too good. I'll be in bed for three more weeks.

Costello: I see.

Sarubbi: That Mr. A wants to see you.

Costello: Who?

Sarubbi: That contract that was started last winter. He wants to finish it, so he would like to see you here.

Costello: Oh, yes, I know.

Sarubbi: How about 5:30 Monday at my house?

Costello: That's O. K. What's the address?

Sarubbi: It is 10 Monroe Street, Apartment HF, on the 11th floor.

Costello: O. K. Doc, tell Mr. A I'll see him there, and take care of yourself until I see you Monday."

Do you remember that conversation?

[fol. 309] A. Well, we might have had that conversation. I am under the impression that I went up there and I never could talk to Dr. Sarubbi, because he was really a sick man. When he called me, I went to see him to talk to him on the subject of going to Hot Springs.

Q. I know that is what you had in mind because you did mention Hot Springs in another conversation. But by Mr. A you meant Aurelio, didn't you?

A. Well, I don't remember.

Q. You said this, "Tell Mr. A I will see him there." He said to you, "That contract that was started last winter, Mr. A wants to finish it, so he would like to see you here." Would Mr. A mean anybody other than Aurelio?

A. No, I don't believe so.

Q. Sarubbi was interested in Aurelio?

A. Absolutely. It could not have been anybody else, but I just don't remember the details of it.

Q. When you got there, was Aurelio there?

A. No.

Q. Did you ever see Aurelio at Sarubbi's apartment?

A. No.

Q. And he was so sick that you say you did not discuss Aurelio?

A. No.

Q. That is the best you can say of that conversation?

A. Yes.

Q. But if he said "Mr. A" it probably meant Aurelio? He probably wanted to be brought up to date?

A. Up to date on the nomination.

Q. Now, a week or so before the Convention, Mr. Costello, didn't Stand tell you that he was not satisfied with the way things were going?

A. Well, he did call me one morning and told me that—have you reference to Aurelio?

[fol. 310] Q. Yes. That it looked as if Mike were veering away from what you people thought was a promise?

A. That is right.

Q. And that Kennedy was trying to run out on the promise that he made?

A. Yes, he made me to understand that.

Q. And isn't this the conversation that you have reference to, on August 14, 1943:

"Costello: How is things?

"Stand: I had a talk with Mike yesterday and I'm not satisfied with things as they stand. The Mick will have to wait."

Whom did he mean by the "Mick"? Would that be Gavanagan or Byrnes?

A. Maybe Byrnes.

Q. Then he said, "You sure have a lot of work cut out for you." I suppose he meant that you had a lot of work getting Kennedy back to the place where you had him before.

A. Yes.

Q. And that place was in favor of Aurelio?

A. That is right.

"Costello: It looks that way.

"Stand: It appears as though he gets you to a certain point and then leaves you stand. He wants to talk to you. He figures he can turn on the charm and tell you about what one Irishman said to the other and you will release him."

He intended to convey there that Kennedy wanted you to release him from the promise that he and Kennedy had made to you with reference to Aurelio?

A. Yes.

[fol. 311] Q. And continues: "Stand: If you stand pat, everything will work out."

A. Yes.

Q. That is, if you hold to the promise—

A. Yes, I remember that conversation.

Q. And you do recall this conversation?

A. Yes.

Q. Then Stand continues. He says, "He has those two stiff, Buckley and that other Irishman. They can wait." Who is the other one, Mr. Costello?

A. I don't know who.

Q. Well, some other Irishman. There are lots of them.

A. I presume so.

Q. "He is also putting up a Mick for lieutenant governor. He's got plenty of other Irishmen on the ticket.

A. Yes.

"Costello: Yeah. Higgins.

Stand: Yeah. He also has Collins and McGeehan. If he gets in touch with you, let me know what he has to say.

Costello: O. K. I'll be at the shop if you need me."

Now, that conversation has taken place?

A. Yes.

Q. And it has reference to the fact that Kennedy was trying to side-step on the promise he made on Aurelio?

A. That is right.

Q. Now, after he had given you this information, Mr. Costello, what did you do about it?

A. I spoke to Kennedy.

Q. The 14th was on a Saturday. Do you remember when you spoke to him?

A. Oh, probably a few days later.

Q. Well, maybe this will refresh your recollection. On Monday morning, the next Monday morning, August 16th, there is a call:

[fol. 312] "Costello: Hello."

Mike: Hello, Frank. What are you doing?

Costello: Having a little coffee. How are you Mike?

Kennedy: O. K. Are you coming down today?

Costello: Yes, about twelve. I have another appointment.

Mike: O. K. See you then.

Right, Mike."

Then you probably saw him the following Monday.

A. Probably.

Q. What did you say to him?

A. I asked him about Aurelio.

Q. Yes?

A. And he told me that Aurelio does the ticket honor. In other words, just the reverse, the opposite of what Bert Stand told me.

Q. Is that the charm that Bert was talking about?

A. He said "He does the ticket honor—war record and so forth." He said he will be on the ticket.

Q. In other words, he assured you that he was going to stick to his promise?

A. Yes.

Q. Did you say "that Bert tells me—"

A. No.

Q. You didn't want to give Bert away?

A. That is right..

Q. Did you see Bert the same day?

A. I don't know if it is the same day, but I saw him later, maybe the following day or two days later.

Q. Did you tell me that he was getting his information mixed up?

A. Yes, I told him that he is going along with Aurelio. [fol. 313] Q. So Kennedy repeated the promise to you on August 16th, that Monday?

A. Yes.

Q. Now, how long before that had he given you the promise, Mr. Costello, as far back as March or some time between March and August?

A. Well, not March. Probably a month before.

Q. Sometime in July?

A. In June or July.

Q. Was there anybody present at that time?

A. No.

Q. Just you and he?

A. Yes.

Q. He said, "As far as Aurelio is concerned, it is O. K."

A. As far as Aurelio is concerned "I think it is O. K."

Q. Did you repeat that to Aurelio?

A. No.

Q. Did you tell it to Rosenthal?

A. I might have told it to Rosenthal.

Q. With the intention that he repeat it to Aurelio?

A. Yes.

Q. Now, that was Monday, the 16th of August, that Kennedy repeated his promise. Now, you saw him the next day at Longchamps restaurant, and that was a Tuesday, the Tuesday before the Convention; do you remember that?

A. Yes.

Q. Do you remember that you were there for a couple of hours with him?

A. Yes.

Q. With whom?

A. Bert Stand, Clarence Neal, Mike Kennedy and myself.

Q. The four of you?

A. That is right.

Q. Now, what did you have to discuss for two hours at Longchamps?

A. Well, the discussion was—I believe that was the meeting we had where he wanted me to suggest, instead of suggesting it himself in front of Neal, which is a leader, about Sarubbi retiring.

[fol. 314] Q. That did not take two hours?

A. Well, we had coffee and we talked of a lot of things in general.

Q. Did you have any argument about this?

A. Oh, no.

Q. Do you remember that Kennedy did not get there until about twelve o'clock, that you and Neal and Stand were there for a half hour before that? Do you remember that?

A. Well, I just don't remember who got in first or last, but I know the four of us were there.

Q. Didn't you also discuss the judicial ticket?

A. No.

Q. Are you positive of that?

A. Almost positive.

Q. What did you and Kennedy have to talk about earlier that day? Do you remember he called up and said, "Listen, you've got a meeting with Stand at ten o'clock. Shift it back to 11:30"?

A. That is right.

Q. What did he have to talk to you about before eleven-thirty on that day?

A. Kennedy had made this meet himself to Bert Stand. He said: "I would like to get Neal and Frank. I want—I have something to say." In his mind, he thought that he was going to get me to get Dr. Sarubbi withdraw from his leadership, and it seems that very night he probably changed his mind. He thought it was a little too obvious that he, being the leader of Tammany Hall, to suggest to a man to retire because he was sick, in front of the other leaders; and he tried to give me the contract. He called me in the morning and said: "I want to see you before we meet in Longchamps"—and he met me.

Q. Where did you see him?

A. At my home.

Q. And you discussed Sarubbi in your home?

A. He told me that the meet was because we were going to discuss Sarubbi, and "I thought it over and thought [fol. 315] maybe you will do me a favor. The doctor being so close to you, suppose you suggest it, so it won't make me look bad in front of Neal."

Q. What did you say to that?

A. I said: "I will do it."

Q. How long did the meeting take place?

A. Right after that we went to Longchamps.

Q. At your house, did you have any further conversation about Aurelio?

A. I don't believe we did.

Q. It was just about Sarubbi?

A. I believe it was just about Sarubbi.

Q. And then up at Longchamps you continued to talk about Sarubbi?

A. Yes.

Q. How long had Sarubbi been a leader?

A. Well, I imagine just a few years.

Q. And he had supported Kennedy?

A. Supported Kennedy, yes.

Q. At your request?

A. At my request.

Q. And went down the line for him?

A. Yes.

Q. Shifted from Fay to Kennedy?

A. Yes.

Q. At your request?

A. Yes.

Q. A good friend of yours?

A. That is right.

Q. For many years?

A. Yes, four or five years.

Q. You were willing to ease him out on Kennedy's request after he had been sick only a few weeks?

A. Now, don't misunderstand me. There was not a case of my easing him out. He wanted to ease him out.

Q. He wanted to use you as an instrument?

A. If he didn't use me he would do it himself.
[fol. 316] Q. Didn't you give him an argument?

A. I did—at my home. He said: "The district is going to hell. I need a new leader. I want to build the organization up. I can't have leaders—he is a doctor, you know."

Q. Didn't he approve of doctor's being leaders?

A. Well, you will have to ask that of Mr. Kennedy.

Q. You didn't give Kennedy any argument?

A. Yes, I told him the man went along with you—

Q. But he convinced you—

A. He said, "Well"—

Q. To ease him out?

A. He said: "If you do it for me, I will appreciate it. If you talk to him—" All the while I know, talking to the doctor, he wouldn't resign anyway.

Q. But it was just a play, as far as you were concerned?

A. That is right.

Q. What was said at Longchamps about it?

A. I was the one that brought the subject up.

Q. What happened when you brought it up?

A. I said: "The reason we are here, I would like to discuss Dr. Sarubbi. The fellow is sick. He isn't capable of being a leader right now. The district is going bad." Of course, Mike Kennedy chimed in and said: "Yes, I was going to suggest it myself."

Q. What did Neal say?

A. Neal said: "I do not think it is the right thing for you to do."

Q. Meaning Kennedy?

A. Yes.

Q. And did he say: "I don't think it is nice for you to suggest it, Frank"?

A. Well, I said: "He is my friend and he is a doctor." I gave them some sort of story, knowing all the while, [fol. 317] in my heart, if I spoke to the doctor, he wasn't going to resign anyway.

Q. How did Stand feel about this?

A. I don't believe Stand did much talking at all there.

Q. Did Kennedy agree that Neal was correct?

A. Well, I don't know. I just don't remember how we really wound up. I know I wound up with the contract of telling the doctor to resign.

Q. Did you get him?

A. No, I never—

Q. Did you talk with him?

A. No.

Q. He is still the leader?

A. He is still the leader, and we never brought the subject up.

Q. Now, Mr. Costello, you got to that restaurant at 11:35. Stand and Neal were there at the same time. Kennedy came at 12 o'clock. You were in animated conversation for over two hours, arguing with one another, and shaking your fingers at one another for all that period of time. Your argument was quite heated. Now, isn't it true that you have made up this little story because you heard that Kennedy gave the same yarn to the Grand Jury?

A. No.

Q. Didn't you talk about Aurelio at that meeting?

A. No, sir.

Q. Didn't you have an argument about Aurelio at that meeting?

A. No, I never had an argument with Mike Kennedy, Clarence Neal, or Bert Stand, in my life.

Q. And you would be surprised if they dared argue with you?

A. No, I wouldn't be surprised but I don't remember ever having an argument.

Q. You don't. I think I can prove that you did have one. But that is your story as to what happened at Longchamps?

A. That is right.

Q. You remember on the same day, before you got to [Vol. 318] Longchamps, speaking to Stand? Do you recall that Kennedy telephoned you and said: "Make it for 11:30"?

A. That is right.

Q. Then you called Stand and told him to call Clarence Neal and tell him to be there at 11:30?

A. That is right.

Q. And also call Mike and tell him?

A. Because I was busy.

Q. Of course, Mike knew about that but that was to carry out the scheme?

A. That is right.

Q. Now, do you remember Stand calling you back and reporting that he had done these things?

A. Yes.

"Costello: Hello.

Stand: It is okay for 11:30. I might as well tell you he is still in that frame of mind. He feels he has to do something for Fay."

Now, that refers to Kennedy, doesn't it?

A. Yes, it would refer to Kennedy.

Q. And it is Stand telling you that Kennedy is in the same frame of mind; that he wants to do something for Fay, and that meant that he wants to do something for Byrnes who is Fay's candidate; is that so?

A. It would mean that, yes.

Q. As you didn't say anything to Mike when he got to your home about his veering to Fay, doesn't that refresh your recollection?

A. Was that conversation the same morning?

Q. That was 9:03 in the morning, four minutes after you passed on Kennedy's conversation to Stand and eight minutes after Kennedy told you—

A. Well, I might have reminded Mike before the other conversation. I might have reminded him about Aurelio.

[fol. 319] Q. You said: "I understand you are planning to go along with Byrnes."

A. Yes.

Q. What did he say?

A. He said: "I'm going to go along with Aurelio."

Q. So you did discuss it that morning?

A. Yes.

Q. Did you discuss it at Longchamps?

A. No.

Q. Because then you were positive that you had it?

A. Yes.

Q. Now, do you recall speaking to a man by the name of Burke the following day?

A. Burke?

Q. Yes.

A. Who is Burke?

Q. That is what I want to know. This is one that I can't help you on. Suppose I read it to you.

A. Yes.

Q. Mr. Burke asks for Mr. Costello. I guess Mrs. Costello was on the wire.

"Hello.

Burke: That date is okay for three."

I presume three o'clock.

"Costello: Does Jimmy know?

Burke: I have told Max (or Mack) to tell him.

Costello: I'll see you over there.

Burke: I got a date with Bruce's man for 12.

Costello: Fine.

Burke: You want me at three?

Costello: Suppose you call Max (or Mack) up. He needs all the help he can get. You can be loyal to a certain extent.

Burke: Okay, I'll get in touch with him and if he wants me, I'll go."

[fol. 320] Does that refresh your recollection?

A. No.

Q. Did you see Fay about that time?

A. No.

Q. That conversation doesn't ring a responsive chord in your memory?

A. No.

Q. The following morning you got up, Mr. Stand was there on the telephone. Do you remember Stand calling you up and telling you that things were still up in the air even after you had these two additional commitments from Kennedy?

A. He might have.

Q. This is Thursday, August 19th, the same day that you had the party at the Martinique night club.

A. Yes.

Q. Let me see if this doesn't refresh your recollection.

"Stand: I put him to bed last night."

That will mean Kennedy, wouldn't it?

A. Well, I don't know. Read it to me.

"He was groggy. His last was Byrnes is out, Gavan is in. He claims he met Foley and Glennan and that's what they finally decided on, but I think different. I know he met Mahoney, the coal man. He more than likely put the Irish pressure on.

Costello: Well, I got Jimmy to one side and had a talk. I converted him. Do you know if he saw Mike later?

Stand: I don't know, but we have to stand pat.

Costello: I agree or else we will have the worst scandal you ever heard. It seems as though the whole thing is strictly Irish.

Stand: It looks bad. All that stuff about letters and calls from Washington is strictly the bunk. He's [fol. 321] sore that Jimmy didn't come to him first instead of coming to you and Clarence. The best thing you can do is to have Clarence go to him and tell him that is the way it has to go.

Costello: I expect him to call me. What about Higgins?

Stand: I'll talk to you later on that."

Do you want to explain that to us in your own words?

A. That was on the 17th you say?

Q. The 19th, the morning of the day you celebrated at the Martinique.

A. Well, I really don't know how to explain that. I will admit to the conversation.

Q. Let me try to help you. Isn't it true, Mr. Costello, that in addition to wanting Aurelio and in addition to getting promises, repeated promises from Kennedy, that Aurelio was all right, you were also anxious to have Byrnes on the ticket as a favor to your friend Fay? Isn't that right?

A. No, it isn't right.

Q. Well, what do you mean then when you said: "I got Jimmy to one side and had a talk. I converted him." That means Fay?

A. No.

Q. Who does it mean?

A. Well, I'm trying to think.

Q. All right.

A. I don't believe it can mean Fay because Fay never spoke to me on this subject. I got this Byrnes from either Clarence or Bert Stand.

Q. Well, now, but you knew that Fay was supporting Byrnes?

A. Yes.

Q. And Neal and Stand wanted the ticket to be Peck, Aurelio and Byrnes; isn't that so?

A. Neal and Stand?

Q. Wanted the ticket to be Peck—that is the Republican—Aurelio and Byrnes; isn't that right?

A. I believe it was right, yes. Instead he put Gavagan in there.

[fol. 322] Q. You were a little afraid that the ticket was going to be Peck, Byrnes and Gavagan?

A. And not Aurelio.

Q. And not Aurelio?

A. Yes.

Q. That's why you said the whole thing is strictly Irish?

A. Yes.

Q. Because the day before Stand had told you that he feels he has to do something for Fay—that meant Byrnes?

A. That is right.

Q. And the next day he told you that Gavagan is in—Presidential pressure—Roosevelt was for him?

A. Yes.

Q. And you knew Gavagan was going in and you were a little bit afraid that Fay, Chairman of the Executive Committee, was going to ease Byrnes in, too?

A. Yes.

Q. And then Aurelio would be out in the cold?

A. Yes.

Q. And that is what Stand meant when he said to you, "the best thing you can do is to have Clarence go to him and tell him that is the way it has to go"?

A. Yes.

Q. And you did tell Clarence to tell Kennedy, by that, "that is the way it has to go"—Aurelio?

A. I probably told him: "You made me a promise and you can't break your promise as a leader."

Q. When you said: "I expect him to call me later," that was Kennedy, wasn't it; and you saw Kennedy that day before you went to the Martinique, didn't you?

A. Yes.

Q. And Kennedy told you, "All right. I wish to hell I never had this job. I had all sorts of troubles and headaches, but I'm going along with Aurelio."

A. Yes.

Q. And then you got in touch with Judge Aurelio. You telephoned?

A. No.

Q. How did he happen to come to the Martinique?

A. I had a dinner appointment with Judge Savarese at the Martinique and I called Aurelio and invited him to the [fol. 323] dinner. I said: "Bring, also, Abe Rosenthal with you."

Q. Did you invite Kennedy and Stand to drop around too?

A. No. We will come to that later.

Q. All right.

A. He said: "I don't know if I can have Abe there because there was a club meeting, but I will try." I said: "Even if it is for an hour." He said: "All right." So my appointment was with Savarese, myself and Judge Aurelio for dinner.

Then I'm at the Ritz Bar and Kennedy walked into the bar at the Ritz with Bert Stand—oh, no. I had made an appointment with Clarence Neal. He and I were to have a drink and then they walked into the bar, which is Kennedy and Bert Stand, and I told them: "I'm having dinner. Will you folks join me for dinner?" They said: "No, we all have meetings tonight." I said: "Just come down even for a cocktail. I'll have Judge Aurelio and Judge Savarese."

Q. And they came?

A. That was the invitation.

Q. That was the invitation?

A. Yes.

Q. And they were there while Aurelio and Rosenthal were there for a short time?

A. Aurelio and Rosenthal got there ahead of me and Neal was there and then while I'm there a few minutes, Savarese came down and then Kennedy and Bert Stand.

Q. And you told Aurelio at that time that he was in?

A. No, I didn't tell him that at all.

Q. Did Kennedy tell him?

A. Kennedy shook his hand—"Let's not talk about this no more." In other words, he let him understand that he was in.

Q. You congratulated him—everybody congratulated him?

A. Well, it wasn't a case of congratulations, but we felt he was a nominee.

[fol. 324] Q. And he thanked you? Did Aurelio thank you for your help?

A. Not that particular night, no.

Q. By the way, here is a conversation I wish you would explain. It is a conversation with Kelly two days before the convention.

"Kelly: Did you speak to that—"

The conversation first is about his kidney trouble.

"Did you speak to that fellow?

Costello: Who?

Kelly: Harry Brickman.

Costello: Clarence did.

Kelly: Will he be there tonight?

Costello: Clarence told him to be over.

Kelly: We have him on the committee.

Costello: He will be there.

Kelly: Are you going golfing today?

Costello: Yes. Did you speak to Louie?

Kelly: Yes. He is not notified as yet.

Costello: He is all right.

Kelly: He will have to be notified for the meeting.

Costello: Call Mike up and find out.

Kelly: He is in the country.

Costello: Call Bert then.

Kelly: Okay."

Now, what Louie does that refer to? The Louie who was not notified as yet, with respect to whom you suggested [fol. 325] that Kelly call up Mike and find out about it. Did that have reference to Louis DeSalvio, the assemblyman, or Louis Capozzoli?

A. I don't know. I just couldn't tell you, Mr. Hogan.

Q. How about Brickman, do you know anything about him?

A. Yes, but that conversation I just can't figure out. Whatever it is, I know it is an innocent conversation.

Q. Brickman—

A. Brickman is in his district.

Q. He was trying for the leadership himself?

A. Trying to get half of the district.

Q. And Neal spoke about him at your request, Brickman decided to bury the hatchet, is that about it?

A. Yes, temporarily bury the hatchet, because Kelly is a sick man also and eventually he will want to give up half of the district and you can work harmoniously both of you.

Q. Is the understanding that Brickman gets the district after Kelly is completely incapacitated?

A. Yes.

Q. Is that the arrangement that you made with Brickman?

A. Yes.

Q. And you have known Brickman for some time?

A. Well, I've known him a short period.

Q. But he didn't need to come to you through somebody?

A. No.

Q. Now, another conversation. This is the day of the convention, August 23rd, and it is Jimmy again, and see if this doesn't refresh your recollection.

"Jimmy: Hello, Frank. How about having lunch with you this week.

Costello: Sure. Did Clarence call you?

Jimmy: Yes, Saturday.

[fol. 326] Costello: Well, you have nobody to blame but yourself.

Jimmy: I know, but you know how I brought him along.

Costello: You made a bad guess and I a worse one. Hell. He's such a nice man. I'd rather have my arm cut off than what happened.

Jimmy: I know.

Costello: I had a terrible run-in with that fellow.

Jimmy: I know.

Costello: Call me later in the week, and you and that other fellow can have lunch with me, say Wednesday or Thursday.

Jimmy: Okay, Frank."

Wasn't that Fay?

A. No.

Q. Who is that?

A. That must have been Jimmy Kelly.

Q. Who is the person that is such a nice fellow you would rather have your arm cut off than what happened? Was Kelly by any chance pushing Capozzoli for this job?

A. No, he was not.

Q. What did you mean when you said: "Well, you have nobody to blame but yourself: You made a bad guess and I a worse one."

A. I know he was pushing Capozzoli for City Judge.

Q. For City?

A. Yes.

Q. But that didn't come up at this convention.

A. No, but they thought that Byrnes was going to get the Supreme Court.

Q. Oh, then, Kelly was interested because if Byrnes had obtained the Supreme Court nomination—

A. There would be a vacancy.

[fol. 327] Q. Capozzoli would have gone to the City Court?

A. Yes.

Q. And because Kelly was close to you, you were urging Kennedy to take Byrnes rather than Gavagan?

A. No, no, I never had urged Kennedy in that particular.

Q. Aurelio was your only person?

A. That's right.

Q. Then, of course, that would explain this sentence: "Well, you have nobody to blame but yourself."

A. That's right. Kelly might have spoken to me about Capozzoli. When he heard about Byrnes, I said: "Why don't you go to see him," and he neglected it, or something.

Q. You meant by "such a nice man" that Capozzoli is a nice man?

A. Yes.

Q. "I would rather have my arm cut off than what happened." Then, I had a terrible run-in with that fellow—that would have been Kennedy?

A. I don't know if that was Kennedy, because I didn't have no run-in with him.

Q. Didn't you perhaps have reference to the fact that you had to argue a bit with Kennedy and had to lay down the law to him with respect to Aurelio?

A. I didn't lay no law down. I just told him to keep his word. A contract is a contract. I wouldn't call it an argument.

Q. Well, maybe time has mellowed your recollection with respect to it, but Stand was telling you all these things, and isn't it a fact that you were firm and that you insisted that he keep his promise?

A. Yes.

Q. Now, on the 24th, the morning after the convention, you recall that Judge Aurelio telephoned?

A. Yes.

Q. And you called him Tomasso and he called you Francesco, and he said "thanks for everything," and of course he meant what you had been doing for him in connection with this nomination. That's clear and plain.

A. That's right.

[fol. 328] Q. You understood him to mean that?

A. Yes.

Q. And you said: "Congratulations. It went over perfect. When I tell you something is in the bag, you can rest assured." Now, when did you tell him that something was in the bag? Sometime before that?

A. Well, now, that's on the morning of the 24th?

Q. Yes.

A. I really don't recall using the expression "it is in the bag," but if I did I meant it in a different light entirely. Being the Thursday prior, which was the Martinique dinner when Kennedy shook hands with him—well, it is naturally an expression you probably use at a race track. Well,

if the man has got Kennedy behind him and the promise of the Republicans, it is practically in the bag.

Q. Perhaps you said it because Aurelio came to you that night, after he stayed at the Martinique for three or four hours, and he stayed until Rosenthal came back?

A. Yes.

Q. And you talked to him at length during that period?

A. Not politics.

Q. You didn't deliberately avoid politics?

A. I don't know if we spoke any too much on politics.

Q. I am suggesting perhaps that he might have said to you some time during the evening "do you think everything is all right? I hope Raimo or Capozzoli—"

A. Yes, that might have happened after Kennedy left.

Q. And you said to him: "Listen, why don't you forget worrying about it"?

A. Forget about it.

Q. So it may have reference to that?

A. Yes.

Q. Then he goes on to tell you how it was done: Arthur Klein did the nominating, first me, then Gavagan, then [fol. 329] Peck and the doctor called him last night to congratulate him—now, that would be Sarubbi?

A. Yes.

Q. And then he tells about the doctor planning to go to Hot Springs, and you say: "Yes, that's the plan." Then he said: "Joe Loscalzo congratulated me," and he said: "that's a fellow you really should do something for. He certainly deserves something," and he had probably suggested that to you before that, hadn't he?

A. Yes.

Q. And Joe is a good friend of his and if you can help him out with anybody that he knows in Queens, it would be greatly appreciated?

A. We had spoken about him.

Q. Did you tell Judge Aurelio that you had tried to help Loscalzo to get him the District Attorney's nomination?

A. No.

Q. Did you tell him that you had sent him to Kennedy in connection with his wishes to be the leader out there?

A. No, not that I recall.

Q. But after the suggestion was made by Aurelio, you agreed if you could do anything through Kennedy or anybody else to advance his fortunes, you would do it?

A. Yes.

Q. And that is what you had in mind when you said: "Well, we all will have to get together, you, your Missus, Joe and myself and have dinner some night real soon"—get better acquainted?

A. I didn't have that in mind at all. What I had in mind was that at the Martinique dinner, Aurelio spoke of Joe Loscalzo that he wasn't making any headway as a district attorney there, that he should practice law, and he probably thought I could put a lot of law work in his way. [fol. 330] Q. Did you tell him that you could?

A. I didn't tell him that I could, but he is probably under the impression that maybe I could give him some cases, of some kind.

Q. What did you say to that suggestion?

A. Well, I might have said: "If I can help him, I will gladly help him."

Q. Now, do you recall Rosenthal telephoning you shortly after Aurelio?

A. Yes.

Q. And he thanked you further, didn't he?

A. I believe I met him.

Q. But I mean over the telephone he thanked you?

A. Yes, that's right.

Q. And he asked where he could see you because he had plenty to talk over with you, and you said: "Come up to my lawyer's office"—the office of Morris Ernst?

A. That's right.

Q. And you did see him up there?

A. Yes.

Q. Now, what was the "plenty" he had to talk over with you?

A. Well, the "plenty" was that he told me how enthused the Judge was, and how he appreciates it, because it is his district, and not only that but because it gives him an opportunity of getting himself a secretary or attendant's job.

Q. Did he mention his name?

A. No, he didn't mention no name.

Q. Did he ask if it was all right with you if this chap was appointed?

A. He thought I would—

Q. Put in a word with Kennedy?

A. Yes.

Q. And you promised to do it?

A. No, I didn't promise.

Q. You didn't tell him you would not do it?

[fol. 331] A. I didn't promise it. I told him I didn't want to butt in with that, for the simple reason that I thought Sarubbi had somebody.

Q. You didn't say Yes and you didn't say No.

A. That is right.

Q. Did you say anything to him about Sarubbi having a candidate?

A. No.

Q. Well, at the time he probably mentioned the name of the person that he had in mind, didn't he?

A. No, he didn't mention any name to my recollection.

Q. Now, you had not seen Sarubbi in some time, do you remember? He was sick.

A. That is right.

Q. And he was not only sick but he was on the way out, isn't that right?

A. That is right. Well, he wasn't—he was and he wasn't.

Q. You knew what Kennedy had in store for him.

A. That is right.

Q. A beautiful future.

A. That is right.

Q. When did you find out that Sarubbi had a candidate for attendant to a judge that had not even been nominated?

A. I think Dr. Sarubbi has a son-in-law who is a lawyer; and months and months prior to that he always talked about getting his son-in-law a job.

Q. As secretary?

A. Yes.

Q. There are distinctions between a secretary and attendant.

A. I don't remember if Mr. Rosenthal spoke about an attendant or secretary.

Q. In any event, Rosenthal came to you and asked you to say a good word for one of his election district captains for the position of attendant to Judge Aurelio.

A. Yes,—something.

[fol. 332] Q. You didn't tell him about Sarubbi?

A. No.

Q. You indicated if Kennedy approved it, it was all right with you?

A. That is right.

Q. Now there is a conversation on the 25th of August, that is two days after the Convention, between yourself and Stand:

"Good morning, Bert.

Stand: I had a call from Max yesterday. He wants to know when I will see him.

Costello: You will see him today?

Stand: Yes, we have a date for this morning, haven't we?

Costello: Yes.

Stand: It is for 10:30 at 59th Street.

Costello: O. K. I will be over there."

Do you know who that would refer to—Max?

A. That is two days after?

Q. Yes.

A. No, I wouldn't know, but I know I did meet him.

Q. You did meet Stand?

A. Yes.

Q. At 59th Street? Where would that be—"O. K. for 10:30 at 59th Street"?

A. That would be on Madison Avenue. Yes, 59th Street, Longchamps, but we went down and we had breakfast in Child's instead, but I met him at 59th Street.

Q. What did you have to talk over with Stand there?

A. That was right after this thing blew.

Q. No, that was before, Mr. Costello. My statement was August 28th. This was August 25th.

A. I don't recall that.

[fol. 333] Q. Let me try you on one more: The next day, August 26th, still two days before my statement. Bert Stand called Frank Costello:

"Bert: I'm going to meet that fellow at 9:30 o'clock. Where do you want us to meet you, at your house?

Costello: Where are you meeting him?

Stand: At the Biltmore.

Costello: What time?

Stand: 9:30.

Costello: All right, meet me there.

Stand: Which entrance?

Costello: 43rd Street side."

Whom did you meet with Stand at the Biltmore a couple of days after the Judicial Convention?

A. I don't remember that, Mr. Hogan.

Q. You haven't any recollection?

A. No.

Mr. Hogan: All right.

The Foreman: Mr. Costello, will you please come back here Wednesday of next week, same time, two o'clock.

The Witness: Thank you.

The Foreman: Thank you for coming down.

(Witness Excused.)

[fol. 334] People v. John Doe

October 20, 1943

FRANK COSTELLO, recalled as a witness, having been first duly sworn, further testified as follows:

By Mr. Hogan:

Q. After your last appearance before the Grand Jury, the press reported your lawyer as saying that you were not asked to sign a waiver of immunity. Do you recall that I did ask you that the first question and you refused?

A. That's right.

Q. And you feel the same way about signing a waiver today?

A. That's right; yes, sir.

Q. Now; on Wednesday of last week, I asked you this question, "When did you see Kennedy last", and your answer was, "I saw Kennedy about a week ago." Now, do you recall whether you saw him?

A. Yes, sir.

Q. Where was that?

A. At his office.

Q. That would be two weeks ago you saw him in his office?

A. That's right.

Q. How did you happen to go there?

A. Well, I had been trying to get in touch with Kennedy since this thing broke. I am giving you this story my way now, Mr. Hogan.

Q. Sure.

A. Knowing that I don't know what it's all about and I want to find out what the wrong was. I know I've committed no crime and it seems that I couldn't get in touch with him so I want to know what it's all about and went up to his office and discussed the whole thing. I said what is it all about.

[fol. 335] Q. Yes?

A. Where is the harm if there is no harm by my talking for Aurelio and having a misdemeanor record, as you would call it, going back twenty-nine years ago, I said then I am guilty of doing something, but outside of that I don't know of anything else. Now, we met; we spoke. We met in restaurants and so forth and so on. All of a sudden you are playing—you are playing a duck for me. What is it? Who's committed a crime?

Q. In other words, you had a general discussion of this matter with Kennedy?

A. That's right.

Q. Was anybody else present?

A. Yes.

Q. Who?

A. Mr. Stand.

Q. Yes?

A. I asked him the same question.

Q. Yes?

A. And Mr. Neal.

Q. Right. Now, did you see Kennedy on any occasion other than the one you described since I issued my statement?

A. No, sir.

Q. Did you see Stand at any time other than that?

A. Well, I have answered that last week. I believe I have seen him once or twice after that.

Q. And where did you see him?

A. Well, I told you we met in a restaurant.

Q. This is after I had issued my statement?

A. Once after you issued the statement.

Q. In what restaurant?

A. And prior to that I met him at the Biltmore.

Q. Yes; but at the restaurant—

A. Restaurant—Child's Restaurant.

Q. That was after the convention and after I issued my statement so that you saw Stand twice since August 28th and Kennedy once?

A. That's right.

[fol. 336] Q. Did you see Aurelio?

A. No.

Q. Did you communicate with him?

A. No, sir.

Q. Did your lawyer see him?

A. No, sir; not to my knowledge.

Q. You told us last week that Kennedy came to you before he was elected leader and asked for your help?

A. That's right.

Q. Or several occasions he came to your apartment; then you saw him at the Madison Hotel for lunch one day?

A. That was my first meeting.

Q. And you gave him your telephone number. He called you several times asking if the situation had changed, right? Now, was anybody with him when he came to your apartment?

A. I don't believe there was.

Q. Just you and he?

A. Yes.

Q. Well, did anybody other than Kennedy ask you to support Kennedy during that period?

A. Not to my recollection.

Q. How often did you telephone Aurelio in the last five or six months?

A. Once. Just that one time, I believe, to make the appointment for that Martinique dinner.

Q. Now, I suppose he got your telephone number from Rosenthal; is that it?

A. Well, he might have and then I might have given it to him myself, but he didn't call me at that particular time. I called him.

Q. Do you have a recollection of giving your telephone number to him?

A. No, I haven't.

Q. So that you called him on one occasion and that was to invite him to the Martinique and then you told him to bring Rosenthal with him?

A. That is right.

Q. Now, did you ever speak to Mrs. Aurelio on the telephone?

A. I don't believe I did.

[fol. 337] Q. You didn't telephone Aurelio the night of the convention, did you?

A. I don't recall. I might have, but I just don't recall.

Q. Well, your best recollection is that you didn't, isn't that true?

A. At present, yes.

Q. And you would recall it if you did, wouldn't you?

A. Well, I imagine I would.

Q. Now, Mr. Costello, Mr. Rosenthal has testified that at the Martinique you advised him that George Thompson, a leader of the 12th Assembly District, and Isidore Greenberg, a leader of the 17th Assembly District, wouldn't be recognized by the executive committee the following week. Do you recall that?

A. No.

Q. Did you have such information at that time?

A. No. I don't know either gentleman—Greenberg or Thompson.

Q. You don't know Thompson?

A. No.

Q. There is a Thompson who telephoned you occasionally; that is not George Thompson?

A. No.

Q. Who would that be?

A. It might have been—I have a friend by the name of Jimmy Thompson.

Q. In any event, you have no recollection of telling Rosenthal that those men were to be eliminated?

A. No, sir.

Q. Do you recall Aurelio speaking to you at the Martinique about Raimo and Capozzoli and the possibility that either one of them might ease him out of the picture?

A. No.

Q. You have no recollection of that conversation?

A. No, sir.

[fol. 338] Q. Now, we mentioned a number of leaders last week. Do you know other Democratic leaders, I mean leaders other than the ones we mentioned. Do you know Congressman Gavagan?

A. I have met him just once.

Q. Where was that?

A. At Rosenthal's daughter's wedding.

Q. Do you know Senator Buckley?

A. I met him once at Saratoga race track.

Q. Who introduced you?

A. I believe Mr. Kennedy.

Q. Was that before he was leader?

A. No, it was after he was leader.

Q. But you didn't see Buckley or Gavagan in connection with the Judicial Convention at any time?

A. No, no sir.

Q. Did Senator Buckley speak to you by any chance about supporting Kennedy?

A. No.

Q. I ask because I think Buckley was his campaign manager.

A. No, I never knew Buckley until after he was—Kennedy was leader.

Q. Has Mr. Kennedy written any insurance for you, Mr. Costello?

A. No, sir.

Q. Did Mr. Stand ask you to give him some insurance at one time?

A. Yes, he did.

Q. What did you tell Stand?

A. I says, well, if I hear of any insurance—I personally have none to give—I will recommend it, which I never did. I never had the occasion.

Q. If you had heard of it, you would have?

A. I probably would have, yes.

Q. And if you had any to give yourself, you would have given it to him?

A. That is right.

Q. Did you tell that to Kennedy also?

A. Oh, yes.

[fol. 339] Q. And he said, if anything does come along, why he'd be happy to get it?

A. Yes.

Q. You recall testifying before the Federal Grand Jury in August, of 1939?

A. Yes.

Q. You remember there was a Mr. Young and a Mr. Doyle, Assistant United States Attorneys, questioning you at that time, and also Mr. Cahill?

A. I remember Mr. Doyle.

Q. Now, this is a question and answer taken from that examination which I have here. The question is:

“Mr. Costello, you were telling us about your activities in the Pelican Novelty Company. I ask you if that is the only business activity that you have been interested in in the years 1935 to date.”

and the answer is

“Yes, sir.”

Now, was that the truth at that time?

A. From what year was that, Mr. Hogan?

Q. 1935 to 1939.

A. I believe it was, yes.

Q. You gave that answer and it was the truth that you were in the slot machine business from 1935 to 1939?

A. Well, the vending machine. I would call it mint vending machine.

Q. Well, that has been referred to as slot machines, also.

A. Well, I don't know what you call it, Mr. Hogan, I know we have a law and it is legal and it gives mint, just like Wrigley chewing gum machines.

Q. Gives money too, doesn't it?

A. No, sir.

[fol. 340] Q. Doesn't it give slugs that are exchanged for money?

A. Slugs to play for fortunes and what not.

Q. And don't the store keepers cash those slugs too?

A. Well, I don't know that. I am not a store keeper.

Q. Well, in any event that was the truth at that time?

A. Yes.

Q. Except for gambling activities which, I think, you also admitted here?

A. Yes.

Q. Admitted as a matter of fact that you were a book maker in 1931 and 1932?

A. No, I never admitted that.

Q. You did not?

A. No.

Q. You didn't testify that you made book in 1931 and 1932?

A. No, I might have testified that I was a commissioner.

Q. What do you mean by that?

A. Well, I probably take your bet and give it to a book maker. That don't make me a book maker—commission broker.

Q. You'd get a—

A. A commission.

Q. A commission?

A. That is right.

Q. Then would you say you were an agent for a book maker?

A. That is right. I would call it an agent.

Q. Do you recall that in 1935 you were arrested by Federal authorities with Noel Scaffa and some others?

A. Yes, sir.

Q. Do you remember your attorney, Moses Polakoff, saying at that time with reference to you that you were engaged in book making at the track and continuing to say "If he plies the vocation honestly, it is not to be held against him".

A. He might have said that not with my privilege because I was never a book maker.

[fol. 341] Q. You mean you didn't accept bets at the track?

A. That is right.

Q. But you did accept bets and pass them on?

A. That is right, as a commissioned broker.

Q. Well, did you add any business activities to these vending machines after 1939? Did you go into any other business?

A. After 1939, no sir.

Q. So that you were still in that business, is that right?

A. What business?

Q. In the vending or slot machine business?

A. That is this year? Yes, yes.

Q. And you aren't in any other business?

A. No.

Q. And you don't have any interests in any other business?

A. No.

Q. You were asked before this Grand Jury if you had an interest in the Alliance Distributors and your answer was no. Was that true at the time?

A. It is still no.

Q. And it is still true and you were asked before this Grand Jury if you had an interest in the Whittlesly Distillery Company, and your answer was no?

A. That is right.

Q. That is true still?

A. That is right.

Q. On May 17, 1939, you told Dennis McMahon, Deputy Collector of Internal Revenue that your only income was derived from the income of slot machines in New Orleans. Was that true?

A. Yes.

Q. So that you denied that you had any interest in the Alliance or Whitteley Distillery?

A. That's right.

Q. And haven't any present interest in liquor?

A. No.

[fol. 342] Q. Or a liquor distributing company?

A. No, sir.

Q. And you did not tell anybody that you had. Did you ever lie about it to anybody?

A. Well, if you—you want me to give my version?

Q. I want you to answer the question.

A. Well, I don't believe I did.

Q. You never told anybody that you had an interest in that distillery in Scotland?

A. I never volunteered in saying I had an interest.

Q. Well, you haven't any interest, have you?

A. No, sir, I haven't.

Q. And never told anybody you had?

A. Well, I never volunteered to tell them. What I mean by that is this: if you would ask me if I have an interest, I might pass it off in a way to let you believe I have one.

Q. Why?

A. Why? Because Phillip Kastel, which is a dear friend of mine, associate of mine; he represented the Whitteley Distillery Company.

Q. Yes?

A. He was the sole agent in the United States for that purpose.

Q. Yes?

A. And I was practically routing for him and if I thought that you would believe I had an interest and you would buy some liquor, I wouldn't hesitate in passing it off and let you believe it.

Q. But if I were not interested in purchasing liquor, you wouldn't tell that lie to me, would you?

A. Well, I don't know, maybe I might have; I might, in spite. I might have where I thought it would do some friends some good that they would buy some liquor.

Q. Did you get—

A. I don't remember saying it, but I might have.

Q. You don't remember?

A. I wouldn't hesitate.

[fol. 343] Q. Did you get any money from Kastel for pushing his interest at all?

A. No, sir.

Q. You don't recall telling anybody that you had an interest?

A. I might have.

Q. Well, isn't it more likely, Mr. Costello, that you would say, if asked; that Kastel, a very close friend of mine and business associate, is interested in the Whittleley Distillery Company and if you can put anything his way, I would appreciate it?

A. Might have said that.

Q. Isn't it more likely that you would say that than the other?

A. That's right.

Q. Now, you say that you never volunteered this but when people would ask you, you would recommend the products of the Whittleley Distillery, is that right?

A. That's right.

Q. Did you ever tell anybody that you had any trouble getting the stuff over here, getting liquor over here, that you had any trouble getting the stuff over here?

A. No, the chances are that someone would say he'd want a certain amount of cases and they spoke to the Alliance and Alliance would say, "Well, we can't give you but half of the amount," and if they want to use me as a recommendation or to talk for them, I would say, "Well, maybe they got trouble, they have trouble in getting it over, war conditions, and what not."

Q. That would be, if somebody was interested in purchasing liquor?

A. That's right.

Q. Now, Judge Aurelio never asked you whether you were in the liquor business, did he? A. Never.

Q. And you did not tell this to Judge Aurelio, did you?

A. Never.

Q. Did he ever ask you any business you were in—any business?

A. No, never.

[fol. 344] Q. You never told him that you were having trouble getting the stuff over here?

A. No.

Q. Never told him that you were having difficulty getting hops in your liquor business?

A. No, sir.

Q. Now, Mr. Stand testified that he knew you were in the slot machine business—you told him?

A. Well, that's public property, yes.

Q. You told him that?

A. Yes. Well, yes; if I didn't tell him, everybody else knows it. That's a legitimate business in Louisiana.

Q. And you also told Rosenthal that, I believe?

A. I don't remember telling him.

Q. You made no secret of it?

A. No, no secret whatsoever.

Q. As a matter of fact, you disclosed your business in your income tax report?

A. Surely.

Q. You never made a mystery of it at all?

A. No.

Q. Kennedy knew it?

A. I imagine so, yes.

Q. Kennedy was entertained by your associate in New Orleans, isn't that so?

A. I don't know if they discussed business, but I take it for granted that everybody knew.

Q. And it has been widely publicized in the press?

A. That's right.

Q. You have been referred to, rightly or wrongly, as the king of slot machines, isn't that right?

A. That's right.

Q. And that has received probably more publicity than you care?

A. I still call it a vending machine; we have a law in Louisiana. I want to emphasize that.

Q. You were in business, in that business, here in 1932, weren't you?

A. That's right.

Q. And you and Kastel continued in it until the raid of February 18, 1934?

A. That's right.

[fol. 345] Q. And what was the name of that business?

A. I believe it was Midtown.

Q. Well; there were two companies.

A. Tru-Mint.

Q. The Tru-Mint Corporation and the Midtown Novelty, two different names?

A. Yes.

Q. And you had an office at 1860 Broadway on the Eleventh Floor?

A. That's right.

Q. Rental \$150 a month?

A. I just don't remember.

Q. You also had space in the basement, I believe, for storage?

A. Storage room, yes.

Q. How many collectors did you employ?

A. I wouldn't, I can't answer them questions, Mr. Hogan.

Q. Well, I have a statement from your bookkeeper which says that you employed at least fifty collectors. Would that be approximately true?

A. Well, I wouldn't know.

Q. Were you there every day?

A. Well, no, I wasn't active at all. Very, very little.

Q. I have five witnesses, Mr. Costello, elevator operators, superintendent and janitor who say you were there every day and some evenings for long periods of time. Would you say that was false testimony?

A. Yes, it is. I tell you why, because I was in the building, I had an office in that building.

Q. On the eleventh floor?

A. Well either the tenth or eleventh, but it wasn't on the floor of the Midtown Novelty Company.

Q. Well—?

A. Whatever you call it.

Q. Well if you didn't go to the office of the Midtown Novelty—?

A. I had my own private office.

[fol. 346] Q. Well then Kastel could come to your office?

A. That's right, I believe I was on the 10th floor.

Q. So they could go back and forth any time they needed you?

A. That's right.

Q. And they did? Manny Kramer came to your office regularly, didn't he?

A. Yes.

Q. And Kastel came to your office regularly?

A. Yes. That was a different individual office though.

Q. But you were there? Was that office used for anything in addition to this slot machine business?

A. Well I just had an office for myself, I was doing a little gambling.

Q. What type of gambling would that be?

A. Race-horse.

Q. You mean just betting or were you taking bets also?

A. Just betting.

Q. You needed an office for that?

A. Well, I used it for many purposes, maybe to meet some people, something, didn't want to meet them out in the street.

Q. Well what would you have occasion to meet people for? For this machine business for one thing?

A. Well partly, yes.

Q. And for gambling?

A. Well I did my own business in there with the gambling business.

Q. How did you gamble—by telephone?

A. Well I might have settled and collected all my bets.

Q. The lease was signed by Mr. Jaffee. Do you recall that name?

A. Yes.

Q. Did he have an interest in the company?

A. No.

Q. Now you had other stores also at the same time, didn't you?

A. Yes I believe we had one on 27th Street.

Q. 148 East 27th Street?

A. I believe that's the number.

[fol. 347] Q. And didn't you have one also at 247 West 116th Street?

A. That's right.

Q. Did you have any stores other than those two?

A. I don't think so.

Q. What were those stores used for, if you please?

A. Well, they were sort of branch stores.

Q. Repairing machines?

A. Repairing machines, yes.

Q. Branch headquarters?

A. That's right.

Q. How many machines did you have in operation at any period?

A. Oh I just don't remember off-hand, maybe five hundred or so.

Q. Five hundred? And how many did you lose at the time of the raid? That probably is a sore recollection, you probably recall that?

A. Well I couldn't recall how many we lost.

Q. Quite a number?

A. We lost quite a number.

Q. Several hundred?

A. I imagine so, yes.

Q. The papers at the time said that something like seventeen hundred were seized?

A. Oh, no.

Q. Not that many?

A. No.

Q. You were never called to the District Attorney's office?

A. No.

Q. Never questioned by the police authorities?

A. No sir.

Q. Did you expect to be questioned at that time?

A. No, I didn't. Mr. Hogan I want to tell you at that time that you want to call it slot machines, I still call it vending machine it was legal also in New York.

Q. But there were a number of employees questioned by the police and the District Attorney, were there not?

A. I imagine there was, yes.

[fol. 348] Q. But you were not bothered?

A. No.

Q. Nor was Mr. Kastel?

A. No.

Q. Now the money was divided fifty-fifty with the storekeepers, was it not? Wasn't that the arrangement?

A. Well I don't know, I just couldn't give you the exact—

Q. Approximately?

A. Approximately, yes.

Q. And weren't your collectors instructed to tell the storekeepers to cash the slugs that the winning player would receive?

A. I don't know if they were or not.

Q. You wouldn't be surprised if collectors testified to that effect?

A. No, I wouldn't be surprised, no, but I never instructed anyone, never hired anyone.

Q. Well Mr. Kastel handled that, did he?

A. Yes.

Q. It is possible that he gave those instructions?

A. Possible. I don't know. You have to ask Mr. Kastel.

Q. Is he in town?

A. No.

Q. Isn't it true also that the collectors would be supplied with money to reimburse the storekeepers for money they paid out in exchange for slugs? Your collectors would come back with slugs, wouldn't they?

A. Well I don't know. I can't tell you much about that business.

Q. You don't know the business operations?

A. No.

Q. Was your telephone number on the slot machines in case of trouble?

A. Yes.

Q. And you would furnish bail bonds for those arrested?

A. I believe so, yes.

Q. And you paid the fines?

A. That's right.

Q. Did you hire lawyers for that too?

A. I believe we had lawyers, yes.

[fol. 349] Q. In 1933, according to Robert Horowitz, he Mr. Horowitz, wrote 150 bonds for storekeepers arrested

for possession of slot machines. Would that seem about right?

A. Well I couldn't tell you. The name is very familiar to me.

Q. Horowitz?

A. But I never hired him.

Q. But he was hired by one of your associates?

A. That's right.

Q. And Manny Kramer took care of that end of the business, didn't he?

A. Yes, he was the bookkeeper.

Q. Now, of course, you did use the office of the Midtown in addition to your private office, didn't you?

A. Well I used it to the extent of one, of say meeting Kramer or Mr. Kastel would come in and talk to me.

Q. As a matter of fact, there was a stationery die, wasn't there, with your name on it, the name Frank Costello at 1860 Broadway? Remember using that stamp?

A. Might have been. I just don't recall.

Q. And other people in the organization were authorized to stamp your signature on letters of one kind, were they not?

A. No.

Q. Who would have the stationery dies? There are two stationery dies found by the police, Mr. Costello—one in the name of Philip F. Kastel, 1860 Broadway, the other in the name of Frank Costello.

A. What do you mean by a stamp?

Q. A stamp with your signature and address on it that you would apply to absorb ink and then place it on a paper to give a facsimile of your signature.

A. I don't recall that.

[fol. 350] Q. Mr. Gelb suggests that contrary to my thought, it was a die used by a printer to make up letterheads. Do you recall there were letterheads with your name?

A. You are going back many years. I don't recall. I don't recall ever ordering them—the stationery—

Q. But you did see stationery there with your name on it?

A. I don't remember if I did or not. I won't say there wasn't but I just can't recall at present.

Q. Did you employ a person by the name of Mulrooney? Pierce Mulrooney?

A. No, sir.

Q. Can you give any explanation as to why letterheads and envelopes in the name of Pierce Mulrooney were found at 1860 Broadway? Do you know Mulrooney?

A. Yes.

Q. Isn't he, or wasn't he, at that time a member of Hines' organization?

A. That's Commissioner Mulrooney's cousin.

Q. Wasn't he a member of the Hines organization?

A. I imagine he was.

Q. Isn't he a person that was recommended to you by Jimmy Hines for a job at the Midtown Novelty Company?

A. No, he was never recommended to me.

Q. Did he work for you at anytime?

A. No. I have known the man for years. Just know him as a friend.

Q. Did he work for you at any time?

A. No, sir.

Q. There were various packages of currency found wrapped in green paper with the word "Nassau" on them. Does that indicate that you were operating in Nassau also?

A. It might have.

Q. You had machines in Nassau?

A. Believe we did at the time, yes.

[fol. 351] Q. Did you have them in Brooklyn also?

A. No.

Q. Well, who gave you the territory?

A. What do you mean who gave me the territory?

Q. First, how much territory did you have? You had New York, or Manhattan, rather, and Nassau. Could you also go into the Bronx?

A. Yes.

Q. You could put them anywhere that you found locations?

A. That's right. I had a permanent injunction. I had an injunction.

Q. Well, that is hardly responsive and we did hear that before. We know you had the injunction.

A. I mean so I could put them almost any place I wanted to.

Q. I mean you weren't restricted in territory by the Mills Novelty Company?

A. Mills, no.

Q. Could you put machines anywhere you found locations?

A. That's right.

Q. And you did have some in Nassau?

A. That's right.

Q. And you had collectors in Nassau?

A. That's right.

Q. Now, this was big business, wasn't it Mr. Costello?

A. Well, to a certain extent, yes.

Q. And you bought a great number of machines?

A. Yes.

Q. Do you recall in January of 1934 paying the Mills Novelty Company \$50,000 for machines?

A. I don't recall. I might have.

Q. Well, I have a photostat of a check made in favor of the Mills Novelty Company on January 24, 1934. You will note it says: "Charge Philip Kastel." Does that refresh your recollection on it?

A. No. I wouldn't deny it but I never—that's Mr. Kastel's.

[fol. 352] Q. But if he paid out \$50,000 he perhaps told you about it, didn't he?

A. Well, he probably did. You are going back 10 years now.

Q. It is not unlikely that he did pay that?

A. That's right.

Mr. Hogan: Mark it, please.

(Marked "Grand Jury Exhibit 1, as of October 20, 1943.")

Q. After the raid in February of 1934, did you continue operation at all?

A. No, sir.

Q. Between July and October of 1934, Mr. Kastel turned over to you at least \$40,000 checks drawn to your order. I show you those checks. Can you tell us—

A. These checks here, they are all exchange checks, Mr. Hogan. In other words, I was gambling. I have no bank account and I probably had to pay someone some monies and I'd say, "Phil, let me have a check for \$4,000. He would give it to me. That is a \$4,000 check and I give him \$4,000. These are all exchange.

Q. Would you give him cash?

A. Yes. It was an accommodation.

Q. For the face amount of the checks?

A. That's right.

Q. So that between July and October of 1943, if my addition is correct, you gave him cash in the sum of \$40,000?

A. That's right.

Q. And he gave you these checks?

A. That's right.

Q. Now, here's a signature. Can you tell me what that is?

A. No.

[fol. 353] Q. Is it your recollection that these checks were given to the persons whose names appear on the reverse side for gambling debts?

A. I imagine most of them, yes.

Q. I show you check dated July 18, 1934 and note Benjamin Levy's name on it. Is that a gambling transaction?

A. Yes, that must have been, yes.

Mr. Hogan: I think you can mark all of them as one exhibit.

(Marked Grand Jury Exhibit II as of October 20, 1943.)

Q. And check dated July 23, 1934 with the same scroll which has been suggested is the signature of an agent of Johnny Ferone. Did you gamble with Johnny Ferone?

A. He is a bookmaker. He was. He is now dead.

Q. Here is a check dated August 16, 1934 with the endorsement Max Kalick. Kalick was a bookmaker, was he not?

A. That's right.

Q. Would that represent a gambling transaction?

A. That's right.

Q. Check dated September 3, 1934 and the endorsement looks like Claude Tasey. Is that name familiar to you?

A. No. Might have been a gambling. . . .

Q. You don't know anything else it might be?

A. No.

Q. Check dated September 10, 1934, Benjamin Levy—again a bookmaker?

A. Yes.

Q. Check dated September 14, 1934, Benjamin Levy—also a gambling transaction?

A. I am trying to think who this Levy is. It must have been.

[fol. 354] Q. Check dated September 15, 1934, endorsement reads "Abe Hallow"—is he a bookmaker?

A. Bookmaker, yes.

Q. Another check dated September 15, 1934, endorsement is Benjamin Levy—again this might have been—quite a few transactions with Levy, so it must represent gambling debts, isn't that so?

A. That's right.

Q. A check dated September 21, 1934, Benjamin Levy again, that would also be gambling?

A. Yes, I imagine so.

Q. Check dated September 22, 1934, again Benjamin Levy—would you say that was money paid to Benjamin Levy, a bookmaker?

A. That's right.

Q. Check dated September 26, 1934, Ben Davis—that's a new name—do you recognize that name?

A. Benny Davis—that's a bookmaker.

Q. Check dated September 28, 1934, endorsement reads "T. J. Schorr, Special." That's Tom Schorr, is it?

A. Yes.

Q. Bookmaker?

A. Yes.

Q. Check dated September 26, 1934, endorsement Benjamin Levy—also gambling, correct?

A. That's right.

Q. And the check dated October 3, 1934, with the same scroll signature which it is believed is the agent of Ferone?

A. That's right.

Q. October 10, 1934, endorsement reads "Deposit to the account of C. F. Madden"—that would be Cole Madden, Coley Madden, a bookmaker?

A. That's right. That is, he was at the time.

Q. Isn't he now?

A. Well, you have got Mutuel now.

Q. There are bookmakers now?

A. I don't know.

[fol. 355] Q. You don't know that?

A. No.

Q. You would not ask us to believe that you don't know there are bookmakers, would you? How about your friend, Frank Ericson?

A. I would not say he was a bookmaker.

Q. He is taking bets?

A. But he puts them machines, so it is the same thing, isn't it.

Q. Here is a check dated October 16, 1934, the endorsement is Auditore—is he a bookmaker?

A. No, he is not.

Q. That's one that isn't then—\$2000.—what does that represent?

A. I probably loaned it to him. That's Johnny Auditore. I probably loaned it to him and he paid me back.

Q. What business is he in?

A. He is a stevedore.

Q. Got his own company?

A. Yes.

Q. Here is one for \$1550. dated October 17, 1934, and it is the same illegible signature—you believe that to be a gambling transaction?

A. Yes.

Q. And the last is the one to which we made reference first—October 25, 1934, \$4000. with the same signature—you believe that to be a gambling transaction, right?

A. That's right.

Q. Now, who owned the Midtown Novelty Company or Tru-Mint Corporation—which was the correct name?

A. Well, there were different companies, Mr. Hogan.

Q. Did you have an interest in both companies?

A. Yes. They called it Midtown because it was in midtown, and Tru-Mint was different.

Q. Tru-Mint was the parent company?

A. That's right.

Q. Midtown was the subsidiary which had a certain territorial allocation?

A. That's right.

[fol. 356] Q. Who owned the parent company then, Tru-Mint?

A. Well, I had an interest in it and Kastel.

Q. Kastel?

A. Yes, that's right.

Q. A man named Tarr, Louis Tarr?

A. Lou Tarr . . .

Q. Did he have an interest?

A. I really don't know if he had an interest or not.

Q. How about Tillotson, did he have an interest, M. F. Tillotson?

A. Tillotson . . .

Q. Doesn't he have an interest and didn't you buy out his interest in December of 1931?

A. Up in Tru-Mint I believe.

Q. Yes.

A. Yes.

Q. Now, did there come a time when you and Kastel owned the entire company?

A. Well, I don't know if you would call it the entire company or not. You just mentioned a fellow named Tarr. Now there was other people who might have had a certain amount of machines, might have had, say, fifty machines and used our office for calls, and etc. etc.

Q. But you and Kastel had the major portion or the major interest in the company?

A. That's right.

Q. After the raid in February of 1934 you did not operate machines in New York?

A. That's right.

Q. But you resumed operations in New Orleans thereafter?

A. In 1935?

Q. In 1935. And what was the name of that company?

A. That was the Pelican.

Q. Pelican Novelty Company. Now, how did you happen to go to New Orleans, Mr. Costello?

A. Just what do you mean—how did I happen to go to New Orleans?

[fol. 357] Q. Well, what prompted you to set up these machines in New Orleans?

A. Well, it is sort of a long story but Huey Long at the time was a United States Senator. He was a very dear friend of mine.

Q. You had known him for some years prior to that?

A. Yes; I knew him.

Q. Yes.

A. And he told me that—talking of these machines, he said, why not put them out in New Orleans. He said, I will pass some sort of a bill and get a certain taxation out of it for some sort of a fund.

Q. Yes.

A. Old Age or something. He says, How much could you fellows afford, you or your combination—which he meant Philip Kastel—as a taxation on these machines.

Q. Yes.

A. I said, "Well, I think we can afford about \$50 a year." He says, "well, if you can put out a thousand machines there, if I legalize it, that's \$50,000 a year that I can apply to some sort of fund". I just don't remember now, you are going back ten years.

Q. Yes.

A. And through his invitation I went to New Orleans.

Q. That was in 1935?

A. That's right.

Q. And Pelican Novelty Company was set up?

A. That's right.

Q. You and Kastel were interested in it, who else was interested in it?

A. Well, we have had other parties. We had Geigerman's; we had Moran.

Q. Was Moran interested in the Pelican?

A. Yes. Brauer the fellow is dead now.

Q. Now, Moran's correct name is Brocato, isn't it; Thomas Brocato?

A. That's right.

[fol. 358] Q. He has a criminal record, has he not?

A. Not to my knowledge.

Q. Didn't he serve time in Atlanta?

A. Not to my knowledge.

Q. What were your profits in 1935 do you recall?

A. Well, I just don't recall right off-hand.

Q. Well, it was a very good year, was it not?

A. Well, I presume it was.

Q. Do you recall that in 1936 you paid a tax on about \$79,000?

A. Yes.

Q. Now, did the old age people get any money?

A. No. Now, if you will let me explain I will tell you how that came about.

Q. All right.

A. When we got to New Orleans we set these machines out and before Huey Long could go in legislation with it, he was killed—died.

Q. Somebody succeeded him as Governor?

A. Yes.

Q. Or as Senator, I should say.

A. No, he was a Senator at the time.

Q. Yes. My mistake. And did you go to anybody at that time and say it was Huey's idea that money would be derived from these operations to support old age?

A. I don't believe I did. Frankly speaking, I think I took advantage of it and just let the machines out.

Q. And your profit in 1936, according to your income tax, was \$66,000—that is, your individual profits?

A. Yes.

Q. How much did you put up to start the venture, do you recall, Mr. Costello?

A. I just don't recall now.

Q. It wasn't a large amount was it?

A. It couldn't have been so much but I just don't recall.

[fol. 359] Q. You testified in 1939 it was about \$15,000, does that refresh your recollection?

A. Whatever I testified, I just can't recall.

Q. Was Seymour Weiss interested in this?

A. No.

Q. You do know him very well?

A. Very well.

Q. Have had dealings with him?

A. No.

Q. He visits you?

A. I have been a guest at his hotel, that's all.

Q. He visits you in New York?

A. Yes.

Q. He has a criminal record?

A. Well, I wouldn't say visit me. I visit him. He used to come here, stop at the New Yorker and I visit him.

Q. Was he convicted of a mail fraud in New Orleans?

A. Yes.

Q. These machines are so arranged, are they not, that the operators can't lose, isn't that true?

A. No, we have a certain percentage.

Q. Yes. So they are geared so that the operators are bound to receive a certain percentage of the money put in them?

A. That's right.

Q. And what percentage were you operating on in New Orleans?

A. Well, I couldn't tell you the percentage off-hand. I couldn't tell you the percentage unless I asked one of the mechanics that probably is acquainted with the machines more than I am.

Q. Didn't you know the percentage you were operating on when you put the machines in?

A. No.

Q. What is the usual percentage?

A. Well, I don't know, probably 18, 20 per cent.

Q. So that if a million dollars was put into the machine [fol. 360] the operator would be certain of getting \$200,000 back, if it were 20 per cent, isn't that right?

A. That's right.

Q. So to that extent it is no gamble in so far as the operator is concerned?

A. No more than it is gambling for your race tracks here that they took 15 per cent. It's on the same style.

Q. That's all right but the operators can't lose—they get 20 per cent back.

A. That's right.

Q. Weren't some of the machines, Mr. Costello, geared as high as 40 per cent?

A. No, I don't believe ours was ever that.

Q. But some of them?

A. Not ours.

Q. I mean some. You have heard of machines that are geared to that extent?

A. Well, I don't know. I never heard, but I know that ours weren't.

Q. Now, Mr. Kastel spends most of his time down there?

A. He is practically a native, yes.

Q. And how many times a year do you go there?

A. Twice a year.

Q. But you are in constant communication with him?

A. He calls me. I call him.

Q. And you advise him with respect to the purchase of machines?

A. No, he don't need me for advice. He runs the whole business there.

Q. Well, don't you look about for machines for him?

A. Look about?

Q. Yes.

A. Well never did until this year when they were not manufacturing any and I looked about where I could buy some second hand machines—inquired, you know, where I could get some.

[fol. 361] Q. I read you this conversation, for example, on May 27, 1943 with Joe Bruno. Joe Bruno is from New Jersey, isn't he?

A. That's right.

“Costello: Hello, Joe. How do you feel?

Bruno: It is the gall bladder that's bad. I guess I will feel better soon.

Costello: I hope so.

Bruno: That person called me and I don't know if they are available to sell now. There is something about the delivery.

Costello: He is holding out.

Bruno: Why not get in touch with Reading, Pennsylvania?

Costello: I will do that."

Q. Now, that was the conversation about these machines was it not?

A. That's right.

Q. And then on July 20, 1943, there is Irving calls you. Perhaps you can give us his last name?

"Costello: Hello.

Irving: Hello, Frank. This is Irving.

Costello: What do you know?

Irving: I got a call from a fellow out of town. He wants one hundred machines.

Costello: Where is he going to put them?

Irving: Out of town.

Costello: Where?

Irving: Somewhere in New England.

[fol. 362] Costello: I could use one hundred machines myself. We can't get the paraphernalia.

Irving: It's the same all over."

Q. Then some words about golf. Now, that has reference to machines also, has it not?

A. That's right.

Q. And that is part of your job, to get machines and to fix the price for their purchase, isn't it?

A. Not—well, not to fix a price. I am just trying to locate some machines and Kastell fixes his own price.

Q. Well, now let me try to refresh your recollection with respect to that testimony. On June 15, 1943, see if you can recollect a conversation on that day between yourself and Kastell.

"Costello: Hello, did I wake you up?

Q. This is a call to New Orleans.

"Kastell: No, Frank.

Costello: What's new?

Kastell: Everything is all right. No more on the equipment?

Costello: You will have to get it. This fellow bought for a certain price and we can't give that price.

Kastell: I can use it.

Costello: Yes, but not at that price.

Kastell: I will forget it then?

Costello: You forget it."

Q. Were you telling him—

A. Well, I might have had that conversation.

[fol. 363] Q. You were settling on the price, isn't that right?

A. That particular time, yes.

Q. And there are other conversations here in which you refer to pieces of equipment, and all that has reference to the machines, has it not?

A. Yes, that's right.

Q. Now, your associate Kastell has a criminal record, hasn't he?

A. Yes.

Q. He served time in Atlanta for—

A. Mail something.

Q. Mail fraud.

A. Something.

Q. And he was also convicted of grand larceny in Fonda, New York, arising out of the same transaction?

A. Yes.

Q. And as a matter of fact, you visited him in Atlanta, didn't you?

A. Yes.

Q. Did you have an associate by the name of Sherman, George Sherman?

A. No.

Q. You know him very well?

A. Yes, sir.

Q. Doesn't he accept bets for you at the track?

A. I make a bet with him, Mr. Hogan, yes.

Q. And doesn't he—

A. Accept bets for me, no sir.

Q. Isn't he also authorized to take bets for you?

A. No, sir.

Q. You don't have any—

A. I said that before, Mr. Hogan. I was never a bookmaker.

Q. You referred to yourself as a commission broker?

A. Well, not just now. I have been the years that you have gone back.

Q. Didn't you as recently as August, 1942 characterize yourself as a commission broker in sporting events?

A. In 1942?

Q. August of 1942 in connection with a Federal—

A. Income tax?

[fol. 364] Q. No. In connection with another Federal paper. Didn't you designate yourself as a commission broker in sporting events?

A. Just what do you mean—another paper, Mr. Hogan?

Q. Well, you were asked to give your occupation and over your signature on a Federal document you characterized yourself as a commission broker in sporting events. That was August of 1942. Now, what did you mean by that title?

A. Well, I'd like to know the document first, then I can tell you. I just don't remember it.

Q. Well, would you mean by that that you accepted bets and passed them on to—

A. If I said that, yes.

Q. That would be your meaning?

A. Yes.

Q. That you not only made bets yourself, but that you laid off bets for others, is that it?

A. A commission broker—you would give me a bet and I'd lay it off with somebody and collect and pay and so forth.

Q. So that for example, if I wanted to bet \$10,000 with you, you might shift that to Erickson, and Erickson would give you a commission on that transaction? Is that it?

A. Some bookmaker or another, or probably throw it in the machines if we had mutuels at the time.

Q. What is the commission in that type of bet? Does it vary?

A. Five percent.

Q. And you do quite a bit of that?

A. No.

Q. But doesn't Sherman assist you in that at all?

A. No.

Q. Now, I call your attention to this conversation with George Sherman on June 21, 1943.

"Sherman: Hello, Frank.

[fol. 365] Costello: Hello, George. What's my item?

Sherman: \$3,750.

Costello: Is Jimmy coming over to the barber shop?

Sherman: I don't know.

Costello: I will be there at 11 o'clock."

Q. What does that \$3,750 refer to?

A. He probably owed it to me, or I owed it to him.

Q. A gambling transaction?

A. A gambling transaction.

Q. Would that be one you'd lay off or take yourself?

A. No. What month was that, Mr. Hogan.

Q. June of this year.

A. This year, no. It's my own gambling. My personal gambling.

Q. On a horse race, probably?

A. Yes.

Q. And you refer to it that way?

A. That's the total of the day, either collect or pay.

Q. You'd refer to it that way: "What's my item?"

A. That's right.

Q. And you'd bet with him a number of times during the course of the day?

A. Yes.

Q. Now, you know Frank Erickson very well, don't you?

A. Yes.

Q. I have records of dozens of conversations between you.

A. Yes.

Q. You play golf with him?

A. Yes.

Q. And you bet heavily on each hole, I am told, is that true?

A. Well, just a sporting bet. Maybe \$25 a hole.

Q. No more than that?

A. That's all.

Q. Do you have an interest in his business?

A. No.

[fol. 366] Q. You have no interest in Erickson's business?

A. No interest whatsoever, no.

Q. Do you and he have any business interest together?

A. No business at all.

Q. Not in a restaurant?

A. Restaurant?

Q. Yes.

A. No.

Q. When you were arrested in 1935, did you ask Erickson to provide bail for you?

A. No.

Q. Remember bail was fixed at \$50,000 at that time?

A. Was that 1935?

Q. Yes. Do you recall bail being fixed at \$50,000?

A. I was arrested in 1935?

Q. Yes, on the Scaffa matter.

A. \$50,000?

Q. Yes.

A. No.

Q. When was it that Henry Goldstein, the partner of Max Kallick, the bookmaker, put up the cash and collateral for your bail?

A. Well, that's probably 1939.

Q. 1939, it was \$50,000? 1939, then, is that right?

A. That's right, yes.

Q. Erickson had nothing to do with providing that bail?

A. Goldstein.

Q. Goldstein, the bookmaker?

A. Goldstein went my bail bond.

Q. You have told us about these bookmakers. Tom Shaw—do you know him?

A. Yes.

Q. And have you had dealings with him over the years?

A. No, I haven't; not with Tom Shaw, no.

Q. With Ericson more?

A. No; mostly with Shaw.

Q. Coleman Madden?

A. I gave him some bets.

[fol. 367] Q. Schuyler West?

A. Yes.

Q. Benny Brooks?

A. Yes.

Q. Had you gambled with George Herrick at all?

A. No.

Q. You have seen him often?

A. I wouldn't say often.

Q. He has been at the Madison Hotel?

A. Yes.

Q. How about Bill Warren--do you know him pretty well?

A. Yes.

Q. What form of gambling does he participate in?

A. I know Bill Warren to be retired the last fifteen years.

Q. He doesn't gamble anymore?

A. Not to my knowledge.

Q. Not even a crap game?

A. Not to my knowledge.

Q. There was a time when he gambled?

A. Yes, he used to gamble.

Q. You gambled with him in those days?

A. No, I never gambled with him.

Q. Mike Best--do you know him?

A. I knew him slightly.

Q. You gambled with him?

A. No, I never gambled with him.

Q. How about Jim O'Connell, does he work for you?

A. No.

Q. What does he do for a living?

A. Jim O'Connell, he is a runner at the race track. He takes a bet from Jim to John and John to Jones.

Q. An agent of a bookmaker?

A. An agent. Yes, he works for different bookmakers. He has a certain amount of customers and they give him bets and he gives them to different bookmakers.

Q. He doesn't work for any certain bookmaker?

A. No.

Q. Do you bet extensively with him?

A. Very, very seldom.

[fol. 368] Q. Have any large bets with him?

A. I never had a large bet with him.

Q. What do you mean by a large bet?

A. Well—

Q. A thousand dollars?

A. No, I never had a thousand dollar bet with him.

Q. You do bet heavily on these races, do you not?

A. Well, sometimes a \$500 bet or so.

Q. Frank Ericson testified before Commissioner Herlands in 1939 that, with respect to you, you were a big bettor and bet from five hundred to fifteen hundred dollars a race. Would that be right?

A. Well, in 1939 I might have.

Q. Let me read you this conversation with Jim O'Connell and perhaps you can explain it to us:

"Costello: Hello, Jim.

O'Connell: It is so darn hot, I won't be over.

Costello: That is all right.

O'Connell: I got the money for you.

Costello: How much.

O'Connell: \$2910. I will see you in the morning at the barber shop. If I receive a call from Jerry and have to leave early, I will leave it at the shop for you."

Now, what would that have reference to?

A. Maybe at the end of the day, I probably had to collect that \$2000, whatever you call it.

Q. That is almost \$3000, and you just told us that you did not bet heavily with him.

A. I can win \$3000 with \$20 bets. Eight bets at \$20 a bet would be \$5000.

[fol. 369] Q. That would be a red-letter day.

A. That could happen.

Q. Do you remember June 22, 1942, being a red-letter day?

A. No.

Q. And the Jerry—"if I receive a call from Jerry"—would that be Jerry Catana?

A. No.

Q. What Jerry would that bet?

A. I don't know his last name, but he was affiliated with George Sherman.

Q. In the bookmaking business?

A. That is right.

Q. Did O'Connell work for you at any time?

A. No.

Q. Did he work for you in the 20's?

A. Yes.

Q. In the liquor business?

A. In the 20's, yes.

Q. You are still very friendly with him?

A. Yes.

Q. Wasn't he in the Coast Guard at one time?

A. No. His two sons are Coast Guards.

Q. No, I mean in the 20's.

A. No.

Q. Now, did you have an interest in the New York Trotting Meet this last year?

A. Never.

Q. Do you recall that the New York Trotting Meet leased from the New York City Empire Charities, Inc. the Empire City Race Track from July 29, 1943, to September 6, 1943; do you remember that?

A. Do I recall the meet?

Q. Yes.

A. Yes.

Q. Do you recall that Mr. Levy, the president of the old Country Trotting Association was interested in that?

A. That is right.

Q. He is your lawyer, one of your lawyers?

A. Well, yes.

Q. And golf companion?

A. That is right.

Q. You had no interest in that?

A. No interest whatsoever.

[fol. 370] Q. Do you recall that Mr. Levy, in a conversation with you, complained about the man of the Harness Commissioner, Mr. Downing, in insisting upon Pinkerton detectives being in the place. Do you remember some difficulty along those lines?

A. I don't recall. He might have spoken on the subject.

Q. Let me try to refresh your recollection, and this is a conversation on July 29, 1943, Levy to Costello:

"Levy: In Downing's presence, we were told not to have Mahoney or Bolger but had to have Pinkerton. Pinkerton sent us a contract and it's the damndest thing you ever saw. They can refuse to let in anyone that they choose. John is all steamed up. Yesterday, we had a meeting in Mineola and Downing said he could see no reason for convicting a man without a fair trial."

Well, he goes on to talk about this. Do you recall that?

A. Yes, I believe he spoke on that.

Q. And then he continues; this is Levy speaking to you:

"It's like holding a gun up against you. We don't want them. If we cancel them without the landlord's approval—and you see Frank does in Butler's lease.

Costello: If they make any errors, you are subject to suit.

Levy: As boss you should be able to tell them."

Q. Now, what did he mean by referring to you as boss there?

A. Levy said to me "as boss"?

[fol. 371] Q. That is right. "As boss, you should be able to tell them."

A. That is ridiculous.

Q. Well, that is what he said. You didn't tell him it was ridiculous at the time.

A. I don't know if your information is correct.

Q. You don't believe he said it?

A. No, sir.

Q. "The way it stands now," he continues, "you better tell George." Who would George be?

A. Is that me speaking?

Q. No, this is Levy. The entire sentence is, Levy says, "As boss you should be able to tell them. The way it stands now, you better tell George." You say "O. K."

A. I don't remember that conversation.

Q. It doesn't mean anything to you?

A. No, nothing.

Q. You recall Levy expressing concern for the book-makers, saying "we can't jeopardize the bookmakers"?

A. "We can't jeopardize the bookmakers"?

Q. Yes. He was afraid that the Pinkertons would move in and the bookmakers could not operate at the track because the Pinkertons would know the bookmakers and know their agents.

A. He might have spoken on that subject. From a gambling standpoint, if you have a racetrack and have stopped bookmaking, your totalizers would not total as it would if bookmakers were allowed on the racetrack; and everybody that has a racetrack they would prefer to have bookmaking, for the simple reason if I am a thousand dollar bettor and I go to a small track where they don't handle millions and if I am in the mood of betting \$500, my 8 to 5 goes down to 3 to 5, and if I give it to a bookmaker, he takes care, he is going to hold it and keep my price up, but even if the bookmaker doesn't hold it, he throws in \$400 to the machine so the machine would have the \$400 [fol. 372] benefit. So I imagine all these racetrack owners, they just don't like it.

Q. So he was telling you his troubles?

A. He was probably telling me. George Levy is a friend of mine for 24 years or more and we exchange different talks here and there and we play golf. He comes to my home and I go to his home. I never had an interest.

Q. Have you had any other gambling interest recently?

A. Well, last year—no a year before last, I had an interest in Saratoga.

Q. Was that the Piping Rock Casino?

A. That is right.

Q. That was 1942, last year, two summers ago?

A. Two summers ago, the summer before last.

Q. Now, who were your partners in that venture?

A. Well, I don't know who my partners were, there were so many partners there. I just had a very small interest.

Q. You made about \$10,000?

A. Yes, something like that.

Q. And that is a gambling Casino in Saratoga Springs?

A. That is right.

Q. Didn't Joe Adonis have an interest in it?

A. Well, there were so many in it that I don't know.

Q. But he was one of them?

A. Yes, I imagine he had an interest.

Q. And Meyer Lansky?

A. I don't know about Meyer Lansky.

Q. Erickson?

A. No.

Q. No?

A. I am sure that he didn't have any.

Q. You are positive of you and Adonis and you aren't certain of Lansky, is that it?

A. That is right.

[fol. 373] Q. Now, the restaurant or club part was operated by Monty Prosser? A. If I am not mistaken, I think Lansky's brother—it might have been a brother of Lansky.

Q. That would be Lansky's money?

A. That I could not tell you.

Q. Lansky has a lot of experience along these lines has he not? Didn't he run a Casino in Havana for a while?

A. In Havana, yes.

Q. You spent a lot of time in Saratoga in 1942?

A. No, I never spent more than four days there in my life at one time.

Q. So far as you can recall it was yourself, Joe Adonis and one of the Lanskys, either Meyer or his brother—not Erickson?

A. I would not say positive but I know one of them was working in there or had an interest.

Q. Not Erickson?

A. No.

Q. Was there a man by the name of McGoldrick interested?

A. I believe McGoldrick was a floor man. He was working.

Q. And Monty Prosser ran the restaurant?

A. Yes.

Q. And Joe Louis was one of the entertainers?

A. Yes.

Q. The year before that, did you have an interest in the Mother Kelly Club?

A. No.

Q. No interest in that?

A. No.

Q. Adonis did, didn't he?

A. Not to my knowledge.

Q. Do you know a Joe Bedelle?

A. Yes.

Q. Didn't he have an interest in it?

A. No, not to my knowledge. I don't even know Mother Kelly. I have never been in the place.

[fol. 374] Q. Is Bedelle a friend of yours?

A. Well, just an acquaintance.

Q. I show you this police picture and ask you if that is the person known to you as Bedelle?

A. Yes.

Mr. Hogan: Will you mark that please.

(Marked Grand Jury Exhibit No. 3, as of October 20, 1943.)

Q. You have been interested in these gambling Casinos before, have you not?

A. No.

Q. In Florida?

A. No, sir.

Q. Any roulette games any place?

A. No.

Q. How about crap games? Have you ever banked a crap game?

A. No.

Q. Now, going back a few years, you were very close to Arnold Rothstein, weren't you?

A. Yes.

Q. And you gambled with him?

A. No, I never gambled with him.

Q. You never gambled with Arnold Rothstein?

A. No.

Q. You knew him for a long time?

A. Yes, I knew him.

Q. You lent him money?

A. Yes.

Q. And you permitted him to discount your notes?

A. Yes.

Q. And you regarded him as a friend of yours?

A. Well, I thought he was, yes.

Q. In fact, isn't it true, in an affidavit dated July 14, 1942, you said "that Mr. Rothstein and myself were personal friends for upwards of 25 years"?

A. Affidavit?

[fol. 375] Q. Yes, in an affidavit submitted in connection with a lawsuit by the Rothmere Mortgage Corporation against yourself?

A. I never made that affidavit.

Q. You didn't?

A. Not that I recall.

Q. I will show you a copy of the affidavit and see if it doesn't refresh your recollection?

A. Who did I make this to?

Q. It was in the proceeding in the Supreme Court in connection with a motion to dismiss the judgment which had been obtained I believe by default or something.

A. I suppose my lawyer made this thing.

Q. And you signed it?

A. I must have signed this affidavit, yes. I probably signed it without—

Q. You gave him the facts?

A. That is true.

Q. Isn't it true that you were friends, you and Rothstein were friends for a great many years?

A. Yes.

Q. Continuing, "on many occasions Mr. Rothstein would borrow large sums of money from me", that is equally true?

A. That is right.

Q. "On other occasions when I had no available cash to lend Mr. Rothstein, he would ask for and I would give him my note, which Mr. Rothstein would discount at a bank or other lending institution and secure the cash he desired", that is true also?

A. That is true.

Q. So in the 20's—and we recall he was killed in November of 1928—

A. 1928, I believe.

Q. In the 20's you did have quite a bit of money, isn't that so?

A. Well, I don't know I might have. I just don't know.

Q. Well in this affidavit you said you advanced large [fol. 376] sums of money to him. I think there is one advance which is referred to in the suit of \$30,000?

A. Well that was not money. I didn't advance him that money.

Q. You do say in this affidavit that you did lend him large sums of money?

A. I remember lending him money but that particular note that you have reference to, that was not money. That was an accommodation note that I gave him.

Q. You state in this affidavit: "On many occasions Mr. Rothstein would borrow large sums of money from me", and you have told me that is true?

A. Yes.

Q. Now, where did you get these large sums of money from?

A. Where did I get it?

Q. Yes.

A. I might have got it bringing a little whisky in, that is during prohibition isn't it?

Q. That is true, you were in the bootlegging business weren't you?

A. Yes.

Q. And you did smuggle whisky into the country?

A. Yes.

Q. You testified to that before the Federal grand jury. I won't have to read it to you because you admit it here.

A. That is right.

Q. And you had an office for a long time at 405 Lexington Avenue, isn't that so?

A. Yes.

Q. As early as 1925?

A. That is right.

Q. And Jim O'Connell was one of your associates at that time, wasn't he?

A. That is right. He wasn't my associate he was working for me at the time.

Q. What was his job?

A. Well, he was working for me driving a truck, or something, carrying whisky.

Q. And were you associated with Bill Dwyer at that time?

A. No.

[fol. 377] Q. You knew him?

A. Yes.

Q. He was in the bootlegging business also?

A. He was, yes.

Q. And Vanny Higgins—do you recall him?

A. No, I never knew him.

Q. You had heard of him?

A. Yes.

Q. But he wasn't associated with you at any time?

A. No.

Q. Did you own some boats at that time?

A. No.

Q. You used boats of others?

A. Well, yes, chartered a boat or something.

Q. And your income was large in those years, was it not?

A. Well, I wouldn't say it was large.

Q. Well now, taking 1927, for example, you reported \$51,000. That is not small, is it?

A. I didn't report no \$51,000 Mr. Hogan.

Q. Well, I have looked up your state report, Mr. Costello and I tell you that is the figure on it.

A. Well, now, I didn't report that at all. They just assessed me and I paid without making a report.

Q. I guess it is true that you did not pay any income tax from 1929 to 1936, isn't that so?

A. No, 1932—1931.

Q. Isn't it true that in 1936 you filed returns for state income tax for the years 1919 to 1936?

A. Yes, state, yes. That is right.

Q. So that from 1919 until 1936, you paid no state income tax?

A. That is right.

Q. Did you pay federal taxes during those years?

A. Yes.

Q. And then, roughly, you approximated your income for each year, isn't that so?

A. Yes.

[fol. 378] Q. For each of the 17 years; and you paid back penalties on the 1919 tax for 17 years. Now I tell you that your rough approximation of your tax in 1927 was \$51,000 and that, to the best of your recollection in 1936 was what you made in 1927, isn't that so?

A. We don't take in one year.

Q. But I am telling you that is the tax you reported for that year?

A. That is right.

Q. 1927, you reported it as \$51,000; and in 1929 you listed it at \$48,000, is that right; and in 1930, \$35,000. Those are figures that are approximately correct, isn't that so?

A. Well I don't know. I just don't remember just what I did with the state, with them figures. If you have the record there and you have got it from the state department, I will say, yes.

Q. Well, weren't your accountants, Block and Anshus, at that time?

A. Yes.

Q. I also have it from the accountants.

A. Then it must be correct.

Q. I show you a copy of their letter. This was written by Anshus to Mr. Levy, who represented you at that time. Do you recall?

A. Yes.

Q. Now this letter dated March 5, 1937, written to Mr. Levy, says: Anshus has prepared the New York State income tax returns for Frank Costello, for the years 1919 to 1932 inclusive, and the following is a summary of the income—and you will note that the income reported for those years, the 13 years, totals \$305,000; isn't that right?

A. Yes.

Q. Now would you say that that money was made in the bootlegging business?

A. No, I wouldn't say exactly.

[fol. 379] Q. Would you say most of it was?

A. Maybe most of it yes.

Mr. Hogan: Mark that please.

(Marked Grand Jury Exhibit No. 4, as of October 20, 1943)

Q. Did you have any other occupation in those years?

A. Well, I was doing a little real estate at that time.

Q. Did you ever make any money in real estate?

A. Well, made some monies, yes.

Q. Not very much was it? Do you recall any particular real estate transaction in which you made any money?

A. Well, I had bought a building on West End Avenue and 92nd Street.

Q. Yes?

A. And I believe I made a little money there.

Q. How much would you say?

A. Well, I would say maybe twenty-five thousand.

Q. On the sale of that building?

A. Yes.

Q. Did you take it in your name or in the name of a corporation?

A. Well, I think it was a corporation at the time.

Q. Do you remember the name of it?

A. I think it was Koslow.

Q. You contend on the sale of that property you profited to the extent of \$25,000?

A. I think so, about twenty or twenty-five thousand dollars. I just don't remember so far back.

Q. How much did you pay for the property?

A. I think we paid about one hundred twenty-five thousand, I believe.

[fol. 380] Q. Who was associated with you in the purchase of it?

A. I can't think of his name right now.

Q. How much of the \$125,000 was yours?

A. I had fifty percent of it.

Q. So that would be \$62,500.

A. Yes. I think we put up about thirty and then we sold it before we even closed.

Q. Whatever you put up was proceeds of the liquor business, isn't that right?

A. It might have been gambling or liquor.

Q. Gambling and liquor?

A. I can't distinguish money from the liquor.

Q. Now, as early as 1925, you were indicted for bribery

and violation of the National Prohibition Act, isn't that right?

A. 1925?

Q. Yes, 1925.

A. I thought it was 1927.

Q. No, in 1927 the trial was.

A. Oh, I see, yes. That is right.

Q. And there was a disagreement in connection with that, was there not?

A. That is right.

Q. And you owned stock at that time. Do you recall pledging 4,000 shares of Automotive Standards to Arnold Rothstein on a loan transaction?

A. No.

Q. You don't remember that?

A. No sir.

Q. Do you remember testifying in the matter of the Estate of Arnold Rothstein before Surrogate Foley?

A. No sir.

Q. You don't remember testifying there?

A. No sir.

Q. I show you this deposition of Frank Costello and ask you if that isn't—

A. Did you say before Surrogate Foley?

[fol. 381] Q. Surrogate's Court. It wasn't before the Surrogate, but it was pursuant to his order. Do you remember giving this testimony?

A. Nathan Burkan?

Q. Do you remember that?

A. Well, I just don't remember, but if you say that is the record, whatever I said here must be so.

Q. Now, I call your attention to a question and answer on page 9. Mr. Burkan asked: "Did you turn over any security to him?" and your answer is, "Four thousand shares of Automotive Standards, Inc. stock".

A. No.

Q. You didn't give that answer?

A. No, I never heard of that stock, and I never had any stock in my life.

Q. Continuing the questioning, it reads: "Did you get a receipt from Mr. Rothstein upon the delivery by you to

him of this stock?" And your answer is "No". All through this testimony there is reference to this stock. You say that the testimony is incorrect?

A. I think it is, Mr. Hogan. I never had that stock, and I never heard of the name before.

Q. Did you turn over any collateral?

A. No collateral at all.

Q. Did you turn over any jewelry?

A. No. Do you want me to explain it?

Q. Well, you did explain it here.

A. That is all I know.

Q. You never had any stock.

A. No sir.

Q. And you never turned over any jewelry?

A. No.

Q. Can you think of any occupation other than gambling and bootlegging that you had from 1918 to 1932, with the exception of this Kaslow Realty Company?

A. No.

Q. Were you ever employed by anybody from 1918? Yes?

A. No.

[fol. 382] Q. You were convicted in 1915 on a gun charge?

A. That is right.

Q. And sentence was one year in the Penitentiary?

A. A misdemeanor, yes.

Q. Did you get any job after that?

A. No.

Q. You haven't worked since 1916, have you?

A. That is right. Pardon me.

Q. Yes.

A. In 1917 I went into business with a friend of mine, a fellow by the name of Horowitz. I was in business from 1916 to 1919.

Q. What business?

A. He was making dolls. He had a doll factory.

Q. Did he call it the Dainties Products Company?

A. I just don't remember what he called it.

Q. Harry Horowitz?

A. Harry Horowitz.

Q. You didn't do any work there?

A. I had an interest, yes.

Q. Don't you remember being sued by the Columbia Trust Company, and they obtained a judgment for \$3,000 on a loan transaction?

A. On a loan transaction?

Q. Yes. Do you remember that cause of action?

A. That was the ice cream business.

Q. The Dainties Products Company?

A. That was making Eskimo Pies.

Q. You said in your affidavit, Mr. Costello: "Although listed as President of Dainties Products Company, you had no interest in the firm, that you simply did it as a favor to accommodate Harry Horowitz." Do you remember saying that in an affidavit in which you sought to dismiss a judgment that had been taken against you.

A. Well, that is going back twenty-five years.

[fol. 383] Q. This was in 1923, when the judgment was taken against you.

A. That is twenty-one years.

Q. And your office at that time was 405 Lexington Avenue. Now you were in the liquor business at 405 Lexington Ave.

A. I was in the real estate and liquor business at the time.

Q. You didn't do anything by way of producing eskimo pies, did you?

A. Yes, that was prior to that, much prior.

Q. You were actually engaged in producing eskimo pies?

A. Yes.

Q. What money did you put in that?

A. I must have put in there \$20,000.—and I lost it.

Q. Where did you get that?

A. Well, maybe bootlegging or gambling or something. I don't know where I got \$20,000, twenty-five years ago.

Q. But you didn't do any physical work there?

A. No.

Q. Now, you were telling us about another company that you had an interest in that made dolls of some kind?

A. Yes, that is with Horowitz.

Q. That is the same Horowitz that was in the Dainties Company?

A. Yes.

Q. What was the name of that company?

- A. I don't remember the name.
- Q. How much money did you put in there?
- A. I put some money in there—and I lost it.
- Q. And that money was obtained from bootlegging?
- A. From gambling or bootlegging.
- Q. Gambling or bootlegging?
- A. Yes.
- Q. You were born in Italy, were you not?
- A. Yes.
- Q. In 1893?
- A. Well, either 1893 or 1896. There was a little discrepancy there with my folks.
- [fol. 384] Q. When did you come to this country?
- A. I was two and a half years old.
- Q. Are you a citizen?
- A. Yes.
- Q. Naturalized?
- A. Yes.
- Q. When?
- A. I imagine around 1920.
- Q. 1920?
- A. Yes, twenty or twenty-five years ago.
- Q. In the Federal Court?
- A. Yes.
- Q. Have you voted since 1916?
- A. No.
- Q. You never voted?
- A. No.
- Q. Did you vote before 1916?
- A. No.
- Q. You have never voted in your life?
- A. No.
- Q. I think I asked you before, have you made contributions to political parties at all?
- A. No.
- Q. You have attended party conventions, haven't you?
- A. Just what do you mean by convention?
- Q. Either a national or a state convention held for the purpose of nominating candidates for office?
- A. No I have been to one convention.
- Q. Was that in 1932 in Chicago?

A. That is right.

Q. And you occupied a suite of rooms?

A. I didn't go there for that purpose. I was in Chicago at the time.

Q. And you stayed at the Drake Hotel?

A. Yes.

Q. And you shared a suite of rooms with Jimmy Hines and Jack Plunkett?

A. No, I had my own rooms.

Q. You saw them there?

A. I saw them there.

Q. Whom did you have rooms with?

A. I had my own rooms.

Q. Did you go to school in New York?

A. Yes.

Q. What school?

A. Public School 83.

[fol. 385] Q. How long?

A. Just a short period, a couple of years.

Q. Do you recall as early as 1908 you were arrested? Do you remember that, the first arrest that you had?

A. Yes, we were kids, yes.

Q. Were you in school at that time or had you completed your schooling?

A. No, I believe—I just don't remember.

Q. If you were born in 1893 you would be fifteen then?

A. I must have been in school.

Q. Were you still in school?

A. I might have. I couldn't swear to it.

Q. Now, when you were convicted in 1915 you gave the name Frank Savaro?

A. Yes.

Q. That is not your right name?

A. It is my mother's maiden name.

Q. What is your correct name?

A. Costello.

Q. Was that your father's name?

A. Yes.

Q. Spelled "C-O-S" or "C-A-S"?

A. C-O-S.

Q. You did use the name Castello at one time?

A. No.

Q. Do you remember in 1915 stating that your name was Stella?

A. No.

Q. Never?

A. Never.

Q. Have you used any name other than Frank Savaro or Frank Costello?

A. No.

Q. Never?

A. Just then two names.

Q. Didn't you use the name Murray Hoffman?

A. No.

Q. Didn't you live at the Hotel Cartaret from 1930 to 1931?

A. I never lived there in my life, Mr. Hogan.

Q. At 208 West 23rd Street?

A. I never lived there in my life.

Q. Did you live at 241 Central Park West?

A. Yes.

Q. From 1932 to 1937?

A. That is right.

[fol. 386] Q. And didn't you use the name of Murray Hoffman?

A. No. A friend of mine by the name of Hoffman couldn't get an apartment at the time. He had a lease and then he didn't want to move in and I moved in instead, and lived there seven years.

Q. Under that name?

A. Yes—the lease was under that name but we paid under Costello.

Q. Hoffman didn't live there?

A. No, I took over the lease.

Q. And you went by the name of Hoffman, didn't you?

A. The first check I gave for my rent, it was Costello, it wasn't Hoffman.

Q. The lease always read Hoffman?

A. Well, it was drawn on Hoffman and I moved in and then I notified them that I was taking the apartment from Hoffman.

Q. You didn't use that name?

A. No, absolutely not.

Q. What does Mr. Hoffman do?

A. I don't know. He was a broker, some Wall Street broker.

Q. In applying for the lease you said you were engaged in the manufacture of medicine?

A. I never applied for the lease.

Q. Was Mr. Hoffman in the True-lax Corporation in New Jersey?

A. I believe he was. I remember the name now.

Q. That was no business of yours?

A. No, no.

Q. Do you have an interest in any night club?

A. No.

Q. Own any interest in the Copacabana?

A. No, sir.

Q. Did you have any interest in the Lido Venice?

A. No.

Q. Saratoga, I think it is. Did you ever put up any [fol. 387] money in a theatrical venture?

A. Yes, I put up some money, which I lost, on Hi-li game at the Hippodrome.

Q. How long ago was that—six or seven years ago?

A. All the way back.

Q. Do you have any interest in any bar or restaurant?

A. No.

Q. Do you have an office?

A. No, sir.

Q. Do you have any bank accounts?

A. No, sir.

Q. Brokerage accounts?

A. No.

Q. Safe deposit boxes?

A. No.

Q. Do you keep your money at home?

A. Well, yes.

Q. In cash?

A. Yes.

Q. Do you have any gambling interests other than the ones we have touched on?

A. No.

Q. And you have no ownership interest in anything other than we have touched on?

A. No, sir.

Q. I am going to show you some pictures. Now, you know Willie Moretti, also known as William Moore?

A. Yes.

Q. You have known him many years?

A. Yes.

Q. He lives over in New Jersey, Hasbrouck Heights?

A. That is right.

Q. Is that a picture of him?

A. Yes.

Mr. Hogan: Mark that please.

(Marked Grand Jury Exhibit No. 5, as of October 20, 1943.)

Q. He has a criminal record, has he not?

A. Yes.

[fol. 388] Q. Do you know that he is in charge of the numbers game in New Jersey?

A. I don't know what he is in charge of.

Q. You know he was convicted of the numbers racket in 1934?

A. All I know is that he has been in Elmira.

Q. I beg your pardon?

A. In Elmira and that is in 1914.

Q. How long have you known him?

A. I know him just about that time.

Q. Do you know that in 1934 he was convicted of conspiracy of the numbers racket?

A. No.

Q. You never heard of that?

A. No.

Q. You have heard it rumored that he is in charge of the numbers of the policy game in New Jersey, haven't you?

A. No, I haven't heard it.

Q. You haven't heard that?

A. No.

Q. You are very close to this man?

A. Yes.

Q. He had a breakdown early this year, didn't he?

A. That is right.

Q. He telephoned you frequently before he went to California?

A. Yes.

Q. Would it surprise you to know that the record shows that he called you 130 times in the five months preceding February, 1943?

A. He called me very often.

Q. And he called you at Hot Springs?

A. That is right.

Q. And you telephoned to him at Hasbrouck Heights many times?

A. Yes.

Q. And at Deal?

A. Yes.

Q. Now, what happened to him this year?

A. Nothing.

Q. What type of sickness?

A. I don't know. He got a sort of breakdown.

[fol. 389] Q. Didn't he have a fall of some kind?

A. What do you mean by a fall?

Q. Didn't he fall on his head?

A. I don't believe so. Not to my knowledge.

Q. He got to talking a great deal—rambling?

A. He had a breakdown.

Q. And isn't it true that he started talking too much?

A. I wouldn't say that.

Q. Isn't it true that he became very talkative.

A. Not to my knowledge.

Q. Isn't that the reason that prompted his going to California—to rest?

A. The doctor prescribed him to go for a rest. The man had a nervous breakdown.

Q. Weren't you instrumental in sending him to California?

A. No.

Q. You had nothing to do with that?

A. Absolutely not.

Q. You telephoned frequently while he was out there?

A. I don't believe I telephoned him more than once.

Q. I have records of at least a dozen telephone conversations, but I won't say that you put it all through.

A. He called me.

Q. And you asked Dr. Sarubbi to call him and find out how he was getting along, and also determine if it was safe for him to come back?

A. Yes.

Q. And didn't you caution him to keep quiet—Willie Moore?

A. I don't know what you mean by "keep quiet".

Q. Here is a conversation between you and Willie Moore on June 1, 1943, California. He was at a place called Newhall, wasn't he?

A. I think that was the number, the telephone Newhall something.

[fol. 390] Q. You asked him about his wife and children and then:

"Willie Moore: All are fine. I am all tanned up. I love it here. Solly—"

That is his brother Solly Moore?

A. Yes.

Q. He has a criminal record?

A. Not that I know of.

Q. Do you know that he was convicted of policy also?

A. No.

Q. And also contempt of court for which he got six months?

A. I don't remember that.

Q. He was fined \$1,000 in 1934 for aiding and abetting lotteries?

A. I don't remember.

Q. He said:

"Willie Moore: I love it here. Solly will be down in August and I will be back then.

"Costello: Don't tell me, I know why.

"Willie Moore: Did my brother come up there yet this morning?

"Costello: Not yet, but I expect him any minute.

"Willie Moore: I wrote a letter, but I didn't say much.

"Costello: That is right.

"Willie Moore: I wanted him to come down and spend a couple of weeks with me.

"Costello: Did you take any weight off?

"Willie Moore: Not much.

"Costello: I will let you talk to someone, but don't talk too much, you know."

Q. Now, weren't you cautioning him there not to talk too much?

A. I probably was. The man is a sick man.

[fol. 391] Q. And he would be talking in a rambling fashion, wouldn't he?

A. No, I wouldn't say that.

Q. Hadn't been talking indiscreetly?

A. He was told to keep quiet and take a rest.

Q. Hadn't been talking a little indiscreetly?

A. Not to my knowledge.

Q. He refers to you as "Chief"?

A. No.

Q. Here is a conversation dated June 3, 1943:

"Moore: Hello, chief. I got the telephone connected in 31J.

"Costello: How do you feel?

It goes on further. So on that occasion he called you chief.

A. Not that I recall.

Q. You never heard him refer to you as chief?

A. No.

Q. He is a friend of Sarubbi also, isn't he?

A. Yes.

Q. I think you testified that you asked the Doctor to call up. And see if this does not refresh your recollection, a conversation between you and Sarubbi on June 8, 1943. We won't read the whole conversation but you say to Sarubbi:

"Costello: You are a doctor. Tell me, what you think of this? In the first place he has stopped talking big and he realizes that he has been talking big and is worrying. He can't get it into his head just what made him talk."

Do you recall that? Do you recall saying that to Dr. Sarubbi?

A. Yes.

[fol. 392] Q. And then you ask Dr. Sarubbi to telephone.

A. Because when he was in the hospital I visited him there once or twice and Sarubbi visited him and he talked about having won \$12,000,000 on one bet.

Q. That was a little big. Is he a gambler?

A. He said on the horses—"I made a bit on a horse and I won \$12,000,000"—something like that. He got a nervous breakdown.

Q. Is that what you had reference to when you say he was talking?

A. Talking?

Q. And you didn't want him to come back for that reason?

A. Not for the reason that he was talking too much, but he wasn't cured.

Q. Weren't you afraid also that he might "talk out of school" as the term goes, and say also what is going on in New Jersey?

A. No, I am not afraid of that, Mr. Hogan.

Q. Didn't you tell persons that you planned to keep Willie out there for some time?

A. Yes, yes probably did because he was a hard man to keep that far away, and he has three children and his wife begged me to try to talk it into him.

Q. That would explain your reference in a telephone conversation on June 8th with a certain Tommy.

"Tommy: How much longer will he be out there?

"Costello: Oh, I will keep him out there at least a month or more.

A. Well, probably.

[fol. 393] Q. That means you were doing that because his wife asked you to?

A. That is right.

Q. It was not that he regarded you as his chief and he was taking orders from you?

A. No, that is ridiculous.

Q. Now, in some of the conversations there are references to Ben. Would that be Ben Seigel?

A. I don't know.

Q. A conversation between you and Moore on June 15th, you say

"Costello: Do you see Ben often?

And he replies:

"Moore: A couple of times. Do you want me to tell him anything?

"Costello: No, I will call him."

Wouldn't that be Ben Seigel?

A. I don't know, it could have been Ben Seigel.

Q. Do you know Ben Seigel?

A. Yes, I know him.

Q. Is he referred to some time as Bugs Seigel?

A. That is right.

Q. You know something of his reputation, do you not?

A. Well, I don't know.

Q. You have heard him referred to as the Bugs of the Bugs-Meyer mob?

A. Yes. There were some of the reports here in the newspapers.

Q. Well, he has been in trouble with the law from time [fol. 394] to time.

A. He has been in trouble. As far as I know, he has been in-trouble in California.

Q. And the Meyer of that mob would be Meyer Lansky, isn't that right?

A. That's right.

Q. And you know him very well, of course?

A. Yes.

Q. Now, didn't there come a time when Willie wanted to come back and you told him that he couldn't?

A. Well, I probably told him not to come back, to stay away until he was well-cured.

Q. And didn't you tell his brother also that he wouldn't let him come back?

A. Not that I wouldn't let him come back. I probably told his brother that I would talk to him and try to make him stay there.

Q. Didn't his brother want him to stay there?

A. Yes, everybody was trying to keep him there. He wasn't well. He should stay there and take a rest.

Q. And here is a conversation of June 24th, between you and Solly Moore. Solly says, "I spoke to Willie and he is very worried about his wife. He took her to a country doctor about the headaches and now she feels worse. He wants to come back and take her to a doctor uptown. Costello: No, he can't come back now. Those friends will be on their way out to visit him." Do you recall saying that?

A. No.

Q. You wouldn't deny it. Would you?

A. No, I wouldn't deny it, but I just can't recall it.

Q. But it is possible that you told Solly that his brother Willie couldn't come back, isn't that right?

A. That is right, in that he couldn't come back.

Q. Well, that is what I read to you and that is what you finished testifying, that you didn't want him to come back.

A. That it would be better for him to stay away. The [fol. 395] way you express it, Mr. Hogan, it is like I forced him to stay away.

Q. That is the way your conversation reads, as if you are saying, "He can't come back." Your very words are, "He can't come back now." Then you recall—this is on June 24, 1943—and the following day, June 25, 1943, Solly telephoned you to say that he spoke to Willie and Willie was going to stay out there. Do you remember that? Do you remember Solly reporting to you that way?

A. He might have, yes.

Q. This is Solly Moore, isn't it (showing photograph to witness)?

A. Yes.

Mr. Hogan: Will you mark that, please.

(Marked Grand Jury Exhibit No. 6 as of October 20, 1943.)

Q. Now, there is a Willie Sarrentino that is attached to the Moores and you saw him often?

A. No.

Q. You know him very well?

A. I know him but I didn't see him often.

Q. You have talked to him on the telephone?

A. I don't know. I probably spoke to him. Willie Sarrentino is the one that went out there.

Q. He reported to you about Willie Moore?

A. That is right. I think he did.

Q. Is that his picture?

A. No.

Q. That is not William Sarrentino?

A. No.

Q. Is the William Sarrentino who is associated with the Moores—does he have a criminal record?

A. No, sir, not to my knowledge. He owns horses.

Q. You never heard that he had a criminal record?

A. No.

[fol. 396] Q. And do you know that person?

A. No.

Mr. Hogan: Will you mark that, please.

(Marked Grand Jury Exhibit No. 7 as of October 20, 1943.)

Q. Who would Solly Moore mean by the "long fellow"? Can you help us out on that?

A. No.

Q. A conversation, dated July 6, 1943, Solly says:

"I spoke to Willie and he is making reservations for the 1st—those friends arrived to visit him. I spoke to them, and they said he was fine.

Costello: I'm going to put through a call to him myself in a few minutes"—

I made a mistake there. You can cross that out. The conversation is:

"Costello: I spoke to Willie and he has made reservations for the 1st and those friends arrived to visit him and I spoke to them and they said he was fine.

Solly Moore: I am going to put through a call to him myself in a few minutes. Say, I saw my friend, I don't mean the long fellow."

Do you know who that is?

A. No.

Q. Would that be Zwillman—the long fellow?

A. I don't believe so.

Q. You evidently understood him at the time because you say:

[fol. 397] "Costello: Yes, you wanted to see what the reaction was.

Solly Moore: Yes, he thinks our way.

Costello: Naturally. Did you take care of Charlie Casey?

Solly Moore: I am going to call him. I will call you tomorrow morning."

Does that refresh your recollection at all?

A. No. I don't believe I know Casey.

Q. What business would you and Solly Moore have?

A. No business at all.

Q. What would prompt Solly to say, "He thinks our way"?

A. No business at all. Solly Moore has race horses.

Q. Do you have any interest in them?

A. No, I have no interest in them.

Q. Did you have any business dealings with Sarrentino before?

A. No.

Q. Well, listen to this conversation of August 18th:

"Sarrentino: I spoke to that party and agreed to everything you said. After all, we have known each other for so many years.

"Costello: He is a nice fellow.

"Sarrentino: He is 100%. I told him that you had told me of everything that you had told him, not the other part just between you and me.

"Costello: I understand.

"Sarrentino: Jimmy went away?

"Costello: No, he is back."

[fol. 398] And then he says something about coming down the weekend. Do you remember what that was about?

A. No.

Q. Did you and Sarrentino have any transactions that you recall?

A. No, I never had any transactions.

Q. The Moores are close to Abe Zwillman, aren't they? Don't they know him pretty well?

A. I believe they do, yes.

Q. And you, of course, know Zwillman very well, don't you?

A. Yes.

Q. And you know him by his nickname Longey?

A. Yes, Abe.

Q. Abe Zwillman or Longey?

A. Yes.

Q. Do you know his associate, Jerry Catana also?

A. Yes.

Q. Is this Zwillman?

A. Yes.

Mr. Hogan: Will you mark that, please.

(Marked Grand Jury Exhibit No. 8 as of October 20, 1943.)

Q. Is that Jerry Catana?

A. Yes.

Mr. Hogan: Will you mark that, please.

(Marked Grand Jury Exhibit No. 9 as of October 20, 1943.)

Q. And Zwillman and Catana have criminal records, have they not?

A. Well, you showed me a picture—they must have.

[fol. 399] Q. Well, don't you know that Jerry was in New York State Reformatory for robbery?

A. I heard about Jerry, but I never heard of Zwillman.

Q. Let's finish Catana first. You did hear about that?

A. Yes.

Q. And you also heard that he was fined \$1000 and spent eight months in the county jail for bribing a federal juror?

A. No.

Q. Yet you play golf with him?

A. Yes. I played with him two or three times.

Q. And you saw him quite often?

A. No.

Q. Telephoned occasionally?

A. Very, very seldom.

Q. But he never told you about the little federal business?

A. No.

Q. Well, you have seen Zwillman in Hot Springs, haven't you?

A. I saw him there with his wife some years back.

Q. And you saw him at the Madison Hotel occasionally?

A. I probably saw him there once or twice.

Q. He comes to see you there, does he?

A. No.

Q. Did you see him at the race track?

A. No, I never saw him at the race track.

Q. Didn't you telephone him?

A. No.

Q. You never telephoned Zwillman?

A. I don't believe I did.

Q. Does he telephone you?

A. Well, he might have called me.

Q. How many years do you know him?

A. Because I don't believe I ever had his number. I know him about eight, ten years.

[fol. 400] Q. Didn't he ever tell you in that time that he spent six months in the Essex County Penitentiary for assault and battery?

A. No.

Q. Didn't he ever tell you that he spent another six months in the Federal House of Detention for contempt of court?

A. No.

Q. You never heard of those?

A. That he spent six months?

Q. Yes.

A. No, I never heard of it.

Q. Either one?

A. No.

Q. In the same way you heard of Siegel's and Lansky's, you have heard of Zwillman's reputation?

A. Yes.

Q. And he is supposed to control things in Jersey?

A. I know he is in the tobacco business.

Q. That is a front for other things, isn't it?

A. I can't say something that I don't know, Mr. Hogan.

Q. How about Joe Adonis? Do you know him pretty well?

A. Well, I know him, yes.

Q. Is that he (showing a picture)?

A. Yes.

Q. Do you know him by his name Adonis or Dado?

A. Adonis.

Q. His correct name is Joseph Dado?

A. I believe so.

Mr. Hogan: Will you mark that, please.

(Marked Grand Jury Exhibit No. 10 as of October 20, 1943.)

Q. Oh, you have heard him described as of the Brooklyn underworld, haven't you?

A. In the newspapers.

Q. You saw him very often?

A. Well, I did, yes. When you say—often—

[fol. 401] Q. At the Madison Hotel?

A. Yes.

Q. Waldorf?

A. At the bar.

Q. Play golf with him occasionally?

A. No, I never played golf with him.

Q. Aren't there times when he has to see you?

A. Why does he have to see me? I have no business with him.

Q. He had business with you last year at Saratoga?

A. No.

Q. Is it ever necessary for you to see him?

A. No.

Q. Let me read you this conversation, July 23, 1943, Frank Costello to Joe Adonis:

"Joe: Hello.

Costello: Hello, Joe. How are you?

Adonis: O. K.

Costello: What are you doing today?

Adonis: Nothing.

Costello: Want to play some golf?

Adonis: No, I can't play. Where are you going?

Costello: Honinow—I guess it is.

Adonis: What time?

"Costello: We can kick it around and I can talk to you.

Adonis: I forgot. I have appointments at the office.

Costello: I've got to see you.

Adonis: How about 4:30 or 5?

Costello: That is O. K. Over there?

Adonis: Yes.

Costello: O. K., Joe."

[fol. 402] Now, what did you have to see him for on July 23, 1943?

A. Well, I don't know. It might have been I used to meet him at the track very often. We might have talked something about a horse.

Q. Would you have to see him about a horse?

A. Well, maybe.

Q. Is that the best of your recollection?

A. That is the best of my recollection.

Q. And is that why he comes over to the Madison Hotel to see you?

A. He doesn't go there to see me. That is a public place and I am not the only one there. There are thousands of others there.

Q. Is that a hang-out of his?

A. I wouldn't say that is a hang-out.

Q. How long have you known him?

A. About 8, 10 years.

Q. And another person from Brooklyn, Little Augie Pisano—do you know him?

A. Yes.

Q. Is that a picture of him?

A. That is right.

Mr. Hogan: Will you mark that please.

(Marked Grand Jury Exhibit 11, as of October 20, 1943.)

And you know his reputation, do you not?

A. Through newspapers.

Q. And he is related to Kelly, Jimmy Di Salvio?

A. Yes, a son-in-law.

Q. And you saw him at the Madison Hotel?

A. A few times.

[fol. 403] Q. Now, a detective submits a report of May 19, 1943 and says that he observed Frank Costello with Little Augie in earnest conversation for one hour in the cocktail lounge of the Madison Hotel, from 5:30 to 6:30, and they left the hotel together and took a cab. Do you have any recollection of that?

A. We might have went for dinner.

Q. It is entirely possible?

A. Yes.

Q. You know him that well?

A. Yes.

Q. How long have you known him?

A. 10, 12 years.

Q. Well, perhaps you can recall this particular occasion when I tell you that Little Augie had just come from Dr. Sarubbi's where wax had been taken out of his ears?

A. No.

Q. Do you remember him complaining about that?

A. No.

Q. Saying that he was to the doctor down on Oliver Street to have wax taken out of his ears?

A. No.

Q. He knows Sarubbi?

A. Yes.

Q. He and Sarubbi and Socks Lanza are very friendly?

A. Sarubbi has been Lanza's physician.

Q. And Sarubbi is a good friend of yours?

A. I thought I told you that last Wednesday.

Q. And Lanza is a good friend also?

A. Well, he is a friend.

Q. You have known him over a number of years?

A. I have known him for 7 or 8 years.

Q. Sarubbi is very friendly with Johnny Torio?

A. I don't remember that.

Q. Do you remember they were stockholders in Pendergast-Davies?

A. I don't know.

Q. You know Al Capone?

A. Yes.

[fol. 404] Q. How about Frank Nitti?

A. I know him too.

Q. Willie Bioff?

A. No.

Q. Never met him?

A. I never met him in my life.

Q. Now, Nitti and Capone were from Chicago?

A. Yes.

Q. They were associated in Chicago, right?

A. They are from Chicago, yes.

Q. How about Louis Compagna?

A. I don't know Louis.

Q. Paul de Lucca; also known as Paul Ricca?

A. I know him very slightly.

Q. Met those people in Chicago?

A. Yes.

Q. How about Phil Fiandaro?

A. I don't know him.

Q. Do you know Francis Meritodo?

A. No.

Q. A brother-in-law of Capone's?

A. No.

Q. How about Charlie Joey—I don't know if that is G-i-o-e?

A. No, I don't know him.

Q. Johnnie Roselle; you know him?

A. Yes, I know him.

Q. You telephone him on occasion, do you not?

A. Did I telephone?

Q. Yes, there is a record of one call to Johnnie Roselle in Chicago?

A. In Chicago?

Q. From New York to Chicago.

A. No, I have no recollection.

Q. But you do know him?

A. Yes.

Q. He is on trial in the federal court?

A. Yes.

Q. And Nitti was known as the "enforcer" isn't that true?

A. That is what the newspapers say, yes.

Q. Now, let's get back to Lanza for a while. You have been friendly with him for a long while?

A. About 8 or 9 years.

Q. Is that his picture?

A. Yes.

[fol. 405] Mr. Hogan: Will you mark it please.

(Marked as Grand Jury Exhibit 12 as of October 20, 1943.)

Q. And he sends you meat from time to time?

A. No.

Q. You know he is in jail?

A. I believe so.

Q. Specifically, in December of last year didn't he send you some deer meat by a person known as Rocco? Do you remember Rocco bringing you deer meat from Lanza?

A. No.

Q. Do you remember receiving a turkey from Lanza?

A. No.

Q. Well, you better find out who is taking your meat because Lanza was of the opinion that he sent it to you.

A. I never ate deer meat in my life. That is why I am positive.

Q. He didn't send you a turkey in December, 1942?

A. No.

Q. Did you have anything to do with putting up his bail?

A. No.

Q. Did you give any money to Mrs. Weinstein of the Fish Forwarding Company?

A. No.

Q. Mr. Sullivan says he was in your apartment when Lanza was there?

A. Can I explain that myself?

Q. Sure:

A. Mr. Lanza was not in my apartment. Mr. Sullivan and Mr. Lanza and Dr. Goldwater came to my apartment.

Q. Sullivan came with Lanza?

A. Yes.

Q. Who is Dr. Goldwater?

A. He is a dentist.

[fol. 406] Q. Let's get the story correct then. Did you telephone Assemblyman Sullivan and ask him to come over there?

A. No, sir.

Q. For what purpose does Lanza, Sullivan and Goldwater come to your apartment?

A. Dr. Goldwater is a dentist. I believe his number is 175 West 72nd Street. He is a neighbor of mine, and I know him, and prior to the election of the Executive of Tammany Hall I used to meet him. He used to walk his dog. He has a Boston Bull, and I have a dog also, and we used to talk, and this particular day he told me that "Well, it looks like we are going to have a new leader in Tammany Hall." He said "I am rooting for Jimmy Fay." This is Dr. Goldwater telling me. I said "I am rooting for Fay, for Jimmy." He said "My friend, Pat Sullivan, is a leader. I am going to talk to him and see if he will vote for Fay." I said "Tell you what you do, Doc, if you get a chance come up to my house and you can have him there and both of us can talk to him." Then, four or five days later the three came to my home.

Q. Was Lanza a friend of Dr. Goldwater or Sullivan?

A. He knew both of them, but don't understand me now, I am not saying that they might have met in the hall, but I had no appointment with Lanza. But the three of them walked in together.

Q. But Lanza had been in your apartment before?

A. Mr. Hogan, the reason I want to make this statement is that the newspapers had the statement that he met—

that when he walked into my home, Mr. Lanza opened the door.

Q. Which is wrong?

A. Which is absolutely wrong.

Q. He came in with Lanza?

A. That is right.

[fol. 407] Q. But Lanza had been to your apartment before?

A. He has, yes.

Q. And he was in your apartment after that?

A. I don't know. He might have. He visited me.

Q. Now, do you recall last week you told us that when Rosenthal came to you after the convention and asked you to appoint one of his election district captains for the position of attendant, you hesitated because you had in mind that Sarubbi might want to appoint somebody to that position. Do you recall that testimony?

A. Yes.

Q. And I think in connection with it you said that Sarubbi, some time before, had told you that his son-in-law was a lawyer and he was trying to get him a job?

A. Yes.

Q. Now, did you meet that son-in-law, a Mr. Viggiano?

A. No, I never met him.

Q. You know he is also a brother-in-law of Lanza's?

A. Well, I don't know. I know that Lanza has a brother-in-law.

Q. A lawyer?

A. A fellow that ran for assemblyman or something.

Q. Yes.

A. Is that the same one?

Q. Yes.

A. I never connected the two as one.

Q. Don't you recall a person known as Rocco Pompillio bringing spaghetti and things to your house and meat from Lanza?

A. No.

Q. But you know Rocco—he is an old friend of yours, isn't he?

A. I would not say he is an old friend of mine. I just can't place him now.

Q. Didn't you call him?

A. Oh, yes.

Q. On May 23, 1943?

A. Yes.

[fol. 408] Q. Do you remember he was in the Jewish Hospital?

A. That is right, the fellow died.

Q. You told him at that time "If your wife needs anything tell her to call me. I will take care of anything."?

A. Yes, if she needs some money for the hospital or anything.

Q. You have known him for a long time?

A. Yes.

Q. You know he has a criminal record?

A. Yes.

Q. A long one?

A. I don't know how long.

Q. It is pretty impressive. He is a friend of Lanza's also, isn't he?

A. I would not know that.

Mr. Hogan: Mark that.

(Marked Grand Jury Exhibit No. 13, as of October 20, 1943.)

Q. Didn't he bring things from Lanza to you?

A. No.

Q. He is dead, you say?

A. Yes, I believe he died.

Q. I show you another picture—who is that?

A. That is Meyer.

Q. Meyer Lazansky. It was taken some time ago. It is Meyer Lazansky and you recognize him?

A. Yes.

Mr. Hogan: Will you mark that.

(Marked Grand Jury Exhibit 14, as of October 20, 1943.)

Q. You have known him a long time?

A. About ten years.

Q. And you talk to him on the telephone, don't you?

A. Yes, sure.

[fol. 409] Q. Well, now, I can't make out this conversation. Perhaps you can explain it to me. July 14, 1943, somebody calling Costello:

"Hello Frank. Do you want to see me?"

Costello: "No, the other fellow is home and wants to see you."

This unknown man says:

"What is his number?"

Costello: "Schuyler 4-0906"

That is Lazansky's number, isn't it?

A. I don't remember that number.

Q. Well, I tell you it is. I looked it up.

Costello: "What is the matter? Jerry is supposed to call me."

Now who would that be? Would that be Catena?

A. I don't know.

Q. The man says:

"He was working on that new thing last night."

Costello: "Tell him to call me tomorrow."

"O. K. Will you be around the hotel?"

Costello: "Yes."

Q. Isn't that Zwillman calling you and you are telling Zwillman that Jerry was supposed to call you but he didn't, [fol. 410] and that while you don't want to see him, the other fellow, Meyer Lansky, wants to see you?

A. I don't recall the conversation.

Q. Is it possible that that would be the explanation of the conversation?

A. Well, I don't know why Zwillman would call Jerry. I can't understand that.

Q. No, I mean that Zwillman was calling and saying, "Do you want to see me?", and you replied, "No, but the other fellow is home", meaning Lansky, "and he wants to

see you." Then you say to Lansky, "Jerry was supposed to call me", and Zwillman said, "He was working on that new thing last night", and you say, "Tell him to call me tomorrow."

A. I don't recall it.

Q. Do you want to read the conversation? Maybe that might help you.

A. Maybe that is so.

Q. It was only a few months ago and maybe you will be able to recall it.

A. I don't know what I had for dessert night before last. (Reading paper) I don't recall the conversation.

Q. Do you know Joey Rao?

A. From up in Harlem?

Q. Yes.

A. Yes.

Q. That is his picture, isn't it?

A. Yes.

Q. You have known him for a long time?

A. I haven't seen him in years.

Q. You know he has a criminal record?

A. Yes.

Q. By the way, you see Lansky at the Madison Hotel and other places, don't you?

A. Well, I have seen him at the Madison, yes.

Q. You met him there?

A. Yes.

[fol. 411] Mr. Hogan: Mark that please.

Marked Grand Jury Exhibit #15, as of October 20, 1943.

Q. Now, here is a friend of yours, George Offner. You know him very well, don't you?

A. Yes.

Mr. Hogan: Mark that please.

Marked Grand Jury Exhibit #16, as of October 20, 1943.

Q. You play golf with him?

A. Yes.

Q. And he has quite a record as a forger, hasn't he?

A. I don't know what sort of record he has.

Q. You know he has a criminal record?

A. Yes.

Q. You know that Judge Donnellan of our Court of General Sessions sent him away for four to eight years in 1933 for forgery?

A. I don't believe I knew him in 1933.

Q. But do you know it now?

A. Yes.

Q. And he calls you constantly, doesn't he?

A. Yes.

Q. I have a record of fifty telephone calls from Mr. Offner. Are you in business with him of any kind?

A. No, no business at all.

Q. Do you bet with him also?

A. Well, I did a little betting with him, and we golf.

Q. Did you go out to gambling games with him at all?

A. No.

Q. Listen to this conversation—

A. Other than race tracks.

[fol. 412] Q. Here is a conversation between Offner and you. It says, Offner says:

"Offner: I didn't get home until 4 o'clock.

Costello: What the hell happened? Where were you until then?

Offner: Out there. I went for \$2300.

Costello: Did they stay open until then?

Offner: I had to walk to the golf grounds to get home.

Costello: I would like to talk to you later."

Q. And then you make a meeting for the Waldorf barber shop. That is in June of this year. Does that refresh your recollection?

A. He might have played golf and then he might have played cards.

Q. At the golf house?

A. Maybe.

Q. Poker or bridge?

A. Poker or gin rummy.

Q. \$2300?

A. Yes. They play pretty steep.

Q. Do you play that too?

A. No.

Q. Do you play golf with Nick Rattini also?

A. Yes, I play with him.

Q. That is a picture taken some time ago?

A. Yes..

Mr. Hogan: Mark that please.

Marked Grand Jury Exhibit #17, as of October 20, 1943.

Q. What name do you know him by, Rattini or Perry?

A. Perry.

[fol. 413] Q. And Perry has a record as a robber.

A. I don't—for the last few years.

Q. Don't you know that he has been in Sing Sing?

A. He never spoke about it but I heard rumors.

Q. And you played golf with him constantly?

A. No. I played quite a few times with him.

Q. And he telephoned you occasionally?

A. He did, yes.

Q. Did you have any business deals with him?

A. No.

Q. What would you mean—I am reading from a telephone conversation of June 19, when you said:

"Costello: Did you see Fred.

Rattini: I spoke to him at 12:30. He was going to contact you.

Costello: You haven't seen him since?

Rattini: No.

Costello: He spoke to him in front of my man. If he says he didn't speak, he is lying. Get a hold of him and let me know.

Rattini: Where will you be?

Costello: I am at home now. Then I am going to the barber shop. Tell him it is official, because my man was there.

Rattini: I will call him and find out."

Q. What does that mean?

A. I don't remember any Freds.

Q. You don't remember telling Rattini that your man was there? It doesn't refresh your recollection?

A. No.

[fol. 414] Q. Did he have any interest in that trotting meet?

A. No to my knowledge.

Q. Would you know what he meant in a conversation with you on July 22, 1943. You say:

"Costello: What does it look like?

Rattini: I think it is O. K. unless we are told to stop, and as long as it isn't disastrous.

"Costello: Nothing will happen.

Rattini: We can be working in the meantime and see what happens on the other things."

Q. Does that mean anything to you?

A. No.

Q. Well now, in fairness, this may not be that Rattini, although he represents himself as— You will notice in the opening of the conversation—

"Hello Frank, Do you recognize the voice?

Costello: No.

And the man says:

"Yonkers".

Q. Rattini lives up there doesn't he?

A. Yes.

Q. Would that conversation be Rattini?

A. No, I don't think so.

Q. Do you recall the conversation?

A. No.

Q. It doesn't refresh your recollection as to what was meant by "unless we are told to stop".

A. No.

Q. Do you know Mike Coppola?

A. Yes.

[fol. 415] Q. Known as Trigger Mike. Is that a picture of him on the left—stand up picture?

A. Yes.

Mr. Hogan: Mark that please.

Marked Grand Jury Exhibit #18, as of October 20, 1943.

Q. And he has a long criminal record, has he not?

A. Not that I know of.

Q. I have it in front of me, starting 1914, twenty-four arrests, convicted of petit larceny, grand larceny, a number of discharges, a homicide, felonious assault.

A. All that I know, being a gambler, being around, I don't pry into people's business. I have known everybody that you mentioned, but I don't know their background and I don't inquire.

Q. You see him from time to time, don't you?

A. Yes.

Q. At the race track and other places?

A. And four million other people never knew that I was convicted of a misdemeanor twenty-eight years ago. I never tell people my business. Why should they tell me theirs?

Q. Do you know Louis Buchalter?

A. Yes.

Q. Also known as Lepke?

A. Yes.

Q. Hines was a good friend of yours, wasn't he?

A. He was.

Q. And you followed his trial carefully?

A. Through the newspapers, yes.

Q. Don't you remember in the newspapers that there was testimony to the effect that Trigger Mike Coppolo took over policy after the Dutchman was killed?

A. I don't know about that.

[fol. 416] Q. You don't remember that?

A. I didn't see that was in the testimony. I might have over—

Q. Among other things, haven't you heard that he controls policy in East Harlem?

A. No, I haven't heard that.

Q. You never heard that about him?

A. No.

Q. Now you said you have known Lepke. He was a good friends of yours before, isn't that right?

A. He wasn't a good friend of mine.

Q. You know him for many years.

A. Just by accident, casually, just like I would know a man, and you would meet him.

Q. You never met him other than casually?

A. No.

Q. Never arranged?—

A. Not to my knowledge.

Q. To have a meeting with Lepke?

A. No, not to my knowledge.

Q. How about his partner Gurrah—Jacob Shapiro?

A. I never met him in my life.

Q. Lepke did the meeting for him, did he?

A. Just what do you mean? What do you mean he did the meeting for him?

Q. Did you ever talk to Lepke about Shapiro?

A. I never had any business with Lepke in my life.

Mr. Hogan: Mark that please.

Marked Grand Jury Exhibit #18, as of October 20, 1943.

Q. Do you know Joe Biondo?

A. Yes.

Q. Is that his picture?

A. Yes.

[fol. 417] Mr. Hogan: Mark that please.

Marked Grand Jury Exhibit #19, as of October 20, 1943.

Q. This is Kastell?

A. Yes.

Mr. Hogan: Mark that please.

Marked Grand Jury Exhibit #20, as of October 20, 1943.

Q. Now Joe Baker. Is he a friend of yours?

A. Yes.

Q. Is that his picture?

A. Yes.

Mr. Hogan: Mark that please.

Marked Grand Jury Exhibit #21, as of October 20, 1943.

Q. He is a famous pickpocket.

A. I don't know. I wouldn't say that.

Q. Well now, you see him regularly at the Madison, don't you?

A. I never saw him pick anybody's pocket. He lives in the Madison Hotel and I see him. I walk in and have a drink and he is there—"Hello Frank", and "Hello Joe". I am not married to him.

Q. You haven't heard Mr. Costello, that his specialty is picking pockets?

A. No, I wouldn't say that.

Q. Would you be surprised?

A. Nothing surprises me. I know people but I don't know their background—their past performance.

Q. Do you know him by any other name?

A. No.

Q. He is also known as Joseph Harris, Joseph Zucker, [fol. 418] Joseph Hoffman, and you can see his criminal record takes about two pages starting in 1906.

A. I am not interested in that.

Q. I am just telling you that you be careful the next time you see him. You can never tell when that instinct creeps up. You have told us that you know Ben Siegal?

A. Yes.

Mr. Hogan: Mark that please.

Marked Grand Jury Exhibit #22, as of October 20, 1943.

Q. You see him when you go to California?

A. I have been to California once in my life.

Q. Did you see him then?

A. I did not. I don't believe I did. I was there two days, three days.

Q. How about Bill Duffy—do you know him?

A. I know him, yes.

Q. Was he in the bootlegging business?

A. I haven't seen him for years.

Mr. Hogan: Mark that please.

(Marked Grand Jury Exhibit No. 23 as of October 20, 1943.)

Q. Now do you know Charles Luciano?

A. Yes.

Q. You knew him very well?

A. I knew him, he is an acquaintance.

Q. Isn't a friend?

A. Well I don't know what you are calling a friend—just an acquaintance.

[fol. 419] Q. But you were very close to Lucky?

A. I knew him.

Q. You saw him at Hot Springs and other places?

A. The way you meet a million other people.

Mr. Hogan: Mark that please.

(Marked Grand Jury Exhibit No. 24 as of October 20, 1943.)

Q. By the way was Luciano in bootlegging?

A. Not to my knowledge.

Q. Do you know Tom Penuccio, Tommy the Bull?

A. No.

Q. You never knew him?

A. No.

Q. How about Joe Misseri, do you know him?

A. No.

Q. Joe the Boss?

A. No.

Q. No?

A. I don't know him.

Mr. Hogan: Mark that please.

(Marked Grand Jury Exhibit No. 25). (as of October 20, 1943.)

Q. Now you knew Dutch Schultz?

A. Well, slightly.

Q. How about the boys who were associated with him. How about Bo Weinberg, do you know him?

A. No I don't know him.

Mr. Hogan: Mark that please.

(Marked Grand Jury Exhibit No. 26 as of October 20, 1943.)

[fol. 420] Q. Do you know George?

A. No.

Q. You knew Dixie Davis, didn't you?

A. Yes.

Q. George was very close to Dixie. I am surprised you didn't meet him.

A. I never met him.

Mr. Hogan: Mark that please.

(Marked Grand Jury Exhibit 27 as of October 20, 1943.)

Q. Do you know Sam Krantz?

A. No.

Mr. Hogan: Mark that please.

(Marked Grand Jury exhibit No. 28 as of October 20, 1943.)

Q. How about Morty Krompier?

A. I know him slightly.

Q. And Jules Martin. Did you know him when he was alive?

A. No.

Q. You know Irving Sherman don't you?

A. Yes.

Q. Was he friendly with Schultz?

A. Not to my knowledge.

Q. How long have you known him?

A. Well I probably know Sherman, well, say about 6 years.

Q. He is not employed by you, is he?

A. No.

Q. Do you recall asking him to get you two tickets for a plane on one occasion in June?

A. I believe I did, yes.

Q. And asked him to get Congressman Klein to help on that matter?

A. I might have, yes—which I never got.

[fol. 421] Q. And saying this in the conversation: "I can get that myself but I want to be sure I don't get put off half way. If it is allright with you use Cappozzoli's name. It will look official." Do you remember saying that?

A. I might have.

Q. Had you before that time used congressional priorities to go to New Orleans?

A. No, I never did and that was never fulfilled.

Q. But you did have it in mind at the time?

A. Yes.

Q. Now you know Dutch Goldberg?

A. Well very slightly.

Q. You have heard that he has a criminal record?

A. Yes.

Mr. Hogan: Mark that please.

(Marked Grand Jury Exhibit No. 20 as of October 20, 1943.)

Q. Owney Madden, do you know him?

A. Yes.

Q. Well?

A. I see him every time I go to Hot Springs, he is a resident.

Q. How about George Scalise?

A. No, I never met him.

Q. Legs Diamond?

A. No. I knew of him, seen him but never close.

Q. Vincent Coll?

A. Who?

Q. Vincent Coll?

A. No.

Q. Getting back to Brooklyn for a minute, you know Frankie Yale?

A. No.

Q. You never met him?

A. No.

Q. You didn't meet him in Chicago with Capone?

A. No.

[fol. 422] Q. How about Wolensky who was killed recently, did you know him?

A. Yes.

Q. And his partner, Tommy Cutty?

A. Yes, slightly.

Q. You knew Morris Zweig, little Ziggy?

A. Yes.

Q. You knew him?

A. Yes I knew him.

Q. Larry Fay?

A. Well I don't know if I got Larry Fay right or wrong. I would say I knew him, seen him, not friendly.

Q. Tony Bender?

A. Yes, well enough to say hello, how are you.

Q. Patsy Dykes?

A. Yes.

Q. He comes to see you at the Madison?

A. No.

Q. He has not been to the Madison to see you?

A. He doesn't come to see me.

Q. But you did see him there?

A. Yes I see him around.

Q. You have told us that you knew Dixie Davis.

A. That is right.

Q. And you know another disbarred lawyer, Gene McGee. Do you know him?

A. I told you this last Wednesday, I got a yard and a half of him.

Q. \$150?

A. A yard and a half.

Q. Does he give you legal advice occasionally?

A. No. I don't need legal advice from him.

Q. Morris Ernst, do you know him?

A. Yes.

Q. You went to him in 1940 because the police were bothering you, didn't you?

A. Yes.

Q. And what did he do for you at that time?

A. Was it 1940?

Q. So I believe. What legal services did he do for you in 1940?

A. Well I believe he went down to see the police commissioner for me, if I am not mistaken. He also—he seen some—[fol. 423] body in Hogan's office if Mr. Hogan was District Attorney then.

Q. Not 1940, Mr. Dewey—Mr. Dewey—I came in in 1942.

A. No I meant Mr. Dewey, I beg pardon.

Q. Did he see somebody?

A. I imagine he did.

Q. What was the purpose of his calls. Weren't the police bothering you at that time—pick you up?

A. No, I was never picked up in my life, but there were some rumors around.

Q. That they were going to pick you up?

A. That they were going to pick me up and so forth.

Q. And charge you with vagrancy?

A. Yes.

Q. And you went to Morris Ernst and he went to the Commissioner?

A. He was my lawyer.

Q. You were not picked up?

A. No.

Q. How did you hear that you were going to be picked up?

A. Well, there were rumors around and I heard.

Q. Some police friends of yours told you?

A. I don't know if it was a police friend. I learned of it anyway.

Q. You know a person known as Little Augie DelGazzo?

A. No.

Q. Red Levine?

A. No.

Q. How about Stark brothers, do you know them?

A. No.

Q. Did you have any interest in something called phonovision?

A. I did have an interest.

Q. When was that?

A. That was a few years back. I made an investment there and it never materialized.

Q. Was that the name of it?

A. Yes.

Q. Meyer Lansky has an interest in it, too?

A. No, not to my knowledge. He is connected, I believe, with the

[fol. 424] Q. He is connected, I believe, with the Manhattan Simplex Distributing Company. Have you an interest in that company?

A. No.

Q. Do you know that he is interested in distributing Wurlitzer automatic coin phonograph machines?

A. No.

Q. Wasn't phonovision something similar?

A. No.

Q. Will you explain to us what phonovision was?

A. What Lansky is interested in is a music box, a juke box; and in some of my conversation when meeting him, he probably wanted me to sell some in New Orleans. It was strictly a legitimate business.

Q. Does Mills Novelty Company make these machines too?

A. No. It is Wurlitzer. The phonovision—that is a moving picture machine. You put a nickel in there or a dime and they have a record with the picture.

Q. I see.

A. It is a small moving picture.

Q. And you say a few years ago, you invested some money in that?

A. That is right.

Q. How much?

A. I don't know; about ten or fifteen thousand dollars.

Q. Wasn't Irving Sherman connected with that as manager?

A. Yes.

Q. And a Frank Orsetti also?

A. Yes.

Q. He is a booking agent from California?

A. That is right.

Q. Was there a Harry Banks also who was connected with it?

A. Well, he was in the office, yes.

Q. Now, weren't there some arguments among the people interested because Banks borrowed money from Nick Rosen [fol. 425] in Philadelphia?

A. I don't know anything about the arguments. All my interest was that I bought a certain stock, which was never delivered, from Frank Orsetti. I don't know of any other parties or any fellows.

Q. There were other fellows financing it?

A. All I was interested in if the thing—he phoned me to get a certain block of stock.

Q. Do you know Nick Rosen?

A. I have heard of the name. I believe I know him slightly.

Q. In Philadelphia?

A. Slightly, yes.

Q. Did you get your money back?

A. Yes.

Q. Wasn't there a law suit as result of it?

A. Not with me. I had no law suit.

Q. Kastel?

A. No, I just held one man responsible, Frank Orsetti.

Q. Did Kastel sue anybody in connection with this?

A. No.

Mr. Hogan: Thank you.

[fol. 426] [folios 283a through 419a of original record]

Government's Exhibit No. 2

TESTIMONY OF FRANK COSTELLO BEFORE THE HON. CHARLES B. SEARS, OFFICIAL REFEREE, IN THE MATTER OF THOMAS A. AURELIO (ALSO KNOWN AS THOMAS ANTHONY AURELIO), AN ATTORNEY, SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION—FIRST DEPARTMENT.

October 25, 1943

FRANK COSTELLO, residing at 115 Central Park West, New York City, called as a witness on behalf of the Petitioner and being duly sworn, testified as follows:

Direct examination:

By Mr. Hogan:

Q. How old are you, Mr. Costello?

A. Oh, fifty.

Q. And where were you born?

A. Italy.

Q. Are you a citizen of the United States?

A. Yes, sir.

Q. When did you become a citizen?

A. I believe in 1921 or 1922; I just don't recall.

Q. Have you ever held office or a position in a political party?

A. No, sir.

Q. Have you ever been a member of a political party?

A. No, sir.

Q. You have never registered in any political party?

A. No, sir.

Q. Since you became a citizen in 1921 have you ever voted in any election?

A. No, sir.

[fol. 427] Q. Do you know the respondent, Judge Aurelio?

A. Yes, sir.

Q. And how long do you know him?

A. I believe since the early part of the year, around February.

Q. Of 1943?

A. 1943.

Q. What is your business at the present time, Mr. Costello?

A. I am connected with the Louisiana Mint Co.

Q. Will you describe what type of business that is?

A. It is a mint vending machine.

Q. Vending machine?

A. Yes.

Q. Suppose you describe a vending machine to us.

A. Well, you insert a five cent piece—

Q. Can you insert more than a five cent piece?

A. No, sir.

Q. Aren't there some machines that take larger coins than that?

A. Well, there is, but not of my company.

Q. You have only the five cent machine?

A. That is right.

Q. You were telling us that you insert a five cent piece.

A. And you pull a lever, and you get a mint.

Q. Yes.

A. A package of mints.

Q. Do you always get a mint?

A. Yes.

Q. And what happens after the lever has been pulled?

A. Well, you are liable to get two or four slugs, commonly known as slugs.

Q. You don't always get slugs?

A. No.

Q. Well, isn't there an arrangement of symbols which is displayed on the machine as a result of pulling the lever?

A. Repeat that question, Mr. Hogan.

Q. After you pull the lever, mechanism is set in motion?

A. Yes.

[fol. 428] Q. And then a series of symbols are displayed, isn't that right?

A. On the wheels.

Q. Yes. What are those symbols?

A. Well, there are three plums and so forth, two lemons—

Q. Different fruits?

A. Cherries and so forth.

Q. Yes. And on some combinations of fruits you get only mints, and on others you get slugs?

A. No, you always get mints.

Q. And you get slugs on some combinations?

A. On some combinations.

Q. Isn't this commonly called a slot machine?

A. Commonly known as a slot machine.

Q. We will come back to that later. Do you know Michael Kennedy, the leader of the Democratic Party in this county?

A. Yes, sir.

Q. And how long do you know him?

A. Oh, ten or twelve years.

Q. Do you recall that early in 1942 Christopher Sullivan was removed as leader of the Democratic Party in this county?

A. Yes, sir.

Q. And would you say that you met Mr. Kennedy about 1933 or 1934, would that be about right? You said ten or twelve years ago.

A. Ten or twelve years ago, yes.

Q. And did you see Mr. Kennedy occasionally between 1933 or 1934 and 1942?

A. Yes, sir.

Q. And where would you see him?

A. Well, I would see him in a restaurant, Madison Square Garden, occasionally in a bar having a cocktail.

Q. And you got to know him pretty well?

A. (Continued) Race track; yes.

[fol. 429] Q. What did you call him?

A. Mike.

Q. And what did he call you?

A. Frank.

Q. Do you also recall that in April, I think it was April of 1942, Mr. Kennedy was elected leader of the Democratic Party in this county?

A. Yes, sir.

The Referee: When was that?

Mr. Hogan: April of 1942, your Honor.

The Referee: 1942?

Mr. Hogan: April 14th, 1942.

The Referee: Yes.

Q. Now you have testified that your recollection is that Christopher Sullivan was removed some time in February of 1942. Did you see Mr. Kennedy between February and April of 1942?

A. Yes.

Q. Do you understand that question? The question is, did you see Mr. Kennedy between February of 1942 and April of 1942, when he was elected leader?

A. Yes.

Q. The answer is yes. And where did you see him?

A. I have seen him at the Madison Hotel.

Q. The Madison Hotel. Was it at lunch or dinner?

A. A luncheon.

Q. A lunch. And you had a conversation with him there?

A. Yes.

Q. Tell us what was said by him and what was said by you?

A. He told me that he was going to be one of the candidates for the executive leader of Tammany Hall.

Q. Yes.

A. Would I try and help him.

Q. What did you say?

A. I told him I couldn't very well do that, for the simple reason that I had committed myself to help Jim Fay, Congressman Fay.

Q. Is Congressman James Fay a District leader of the Democratic party also?

A. Yes, sir.

[fol. 430] Q. Do you know the district?

A. Offhand I could not tell you the number of the district.

Q. It is an Assembly District?

A. Yes.

Mr. Sheridan: The 12th Assembly District, my own district.

Mr. Hogan: The 12th Assembly District, middle?

Mr. Sheridan: Lower.

Mr. Hogan: Lower, I see.

Q. And when you told him that what did Mr. Kennedy say to you?

A. Well, he said, "I am trying to solicit all the help I can, but if you can see where you can help me I will appreciate it."

Q. Did Mr. Kennedy have your telephone number at that time?

A. No.

Q. Did you give it to him on that occasion?

A. I believe I did.

Q. Did he ask you for it?

A. Well, I just don't recollect whether he asked me or I gave it to him voluntarily.

Q. Is that number listed in the telephone book?

A. No, sir.

Q. Did he telephone you after the meeting at the Madison Hotel?

A. Yes.

Q. How many times, if you can recall, did he telephone you after that meeting and before he was elected leader?

A. Oh, I couldn't—Maybe half a dozen times.

Q. And what did he talk to you about over the telephone?

A. Well, in one particular phone call he asked me if he could come up and see me. I says, yes.

Q. Well, on the other particular phone calls what did he [fol. 431] say to you?

A. Well, he might have said, "I am making great strides."

Q. Yes.

A. "Are you still with me?" I says, "I am to a certain extent; Fay is first."

Q. And he is second?

A. That is right.

Q. And you say he did come to your apartment?

A. Yes.

Q. And what was the conversation at your apartment?

A. Well, nothing in particular, outside of just repeating the same thing, that he is going along nicely.

Q. Now were you seeing other Democratic leaders during this period?

A. Yes.

Q. Other Assembly District leaders, that is?

A. That is right.

Q. And what are their names?

A. Clarence Neal.

Q. Leader of the 20th Assembly District?

A. Yes; Jimmie Kelly.

Q. Also known as James DiSalvio?

A. That is right.

Q. He is the leader of the 2nd Assembly District, isn't he?

A. Yes.

Q. Anybody else?

A. Dr. Sarubbi.

Q. And Dr. Sarubbi is leader of the 1st Assembly District?

A. The 1st.

Q. Anybody else?

A. Mr. Rosenthal.

Q. Yes; and he is the leader of the 8th Assembly District?

A. Yes.

Q. Now what instructions did you give these leaders with respect to Kennedy?

Mr. Sheridan: I object to the form of the question; not what instructions, but what conversation did you have?

[fol. 432] The Referee: Yes, it embodies an assumption. I will sustain it.

Q. Well, where were you seeing Neal at this time?

A. The Waldorf.

Q. Did you see him often?

A. Very often.

By Mr. Sheridan:

Q. Waldorf what?

A. Waldorf Hotel.

Q. Waldorf-Astoria?

A. Waldorf-Astoria Hotel and barber shop.

The Referee: How do you spell this man's name, Neal?

Mr. Hogan: It is N-e-a-l, Clarence Neal.

By Mr. Hogan:

Q. And what did you say to Neal with respect to Kennedy?

A. Well, I told Neal that—May I explain it my way, Mr. Hogan?

Q. If you wish to.

A. Mr. Neal had spoken to me about Fay; he was sort of managing Fay, his campaign; and I had committed myself, whatever help I could give to Fay.

Q. All right; with leaders?

A. That is right, whoever I knew that I could put a good word in for Fay; and I told him that if Fay did not have enough votes my second choice would be Mike Kennedy.

Q. Yes.

A. And he said, "Well, Mike is a nice fellow; in fact," he says, "if Fay hasn't got enough votes I will go along with Mike Kennedy myself."

Q. Did you say anything else to him?

A. Not that I can recall, nothing in particular.

[fol. 433] Q. You cannot recall anything else, Mr. Costello?

A. No, I don't think there is anything of importance that would register on my mind right now.

Q. Well, you do recall that you were questioned about this subject before the Grand Jury, do you not?

A. Yes.

Q. Now I ask you if this question and answer does not refresh your recollection—

Mr. Sheridan: No, I object to that. I ask your Honor, may the witness be shown the document for the purpose of reading the particular question, and then asked, "Does that refresh your recollection," rather than putting in the record.

Mr. Hogan: Your Honor, I think this is an open hearing, without a jury, and I don't see the point of it.

Mr. Sheridan: I do think that a witness, after he has exhausted his memory, may be shown any document,

any testimony, and then asked. I think that is the proper procedure.

The Referee: There is a certain amount of public interest in this case, and I dare say that the press is represented here. Is there any objection to following Mr. Sheridan's suggestion?

Mr. Sheridan: Show him the particular part of the Grand Jury minutes, rather than read it into the record.

Mr. Hogan: I do believe that the condition which ordinarily suggests such a precaution is not present. We haven't any jury, it is an open hearing, and I see no point to showing the question and answer to the [fol. 434] witness on each occasion; because I assume that there will be a number of occasions when memories will have to be refreshed.

The Referee: Yes.

Mr. Sheridan: Your Honor, may I be heard on that?

The Referee: Yes, I will hear you.

Mr. Sheridan: Anything that transpired before the Grand Jury we know is embodied in the Grand Jury minutes. We have no copy of that, and I know of no authority which would permit us to have a copy. Now whatever transpired before the Grand Jury, I claim, is separate and apart from this transaction. If Mr. Hogan wants to use those Grand Jury minutes either for the purpose of impeaching or contradicting even his own witness I shall not object to it, or if he wants to refresh his recollection all right; but not to try to get in indirectly into this record questions and answers that may have been propounded to this man when there was no semblance of a legal protection for him by way of objection being interposed.

The Referee: I suggest you follow the practice outlined by Mr. Sheridan. If you insist I think you may proceed as you wish, but nevertheless I suggest that you follow Mr. Sheridan's suggestion. It is just as easy to show him the question and answer.

Mr. Hogan: Well, your Honor, I will certainly defer to your recommendation, with the—

The Referee: This is not a ruling against your question.

Mr. Hogan: No. But I mean, your Honor, if we find that it becomes too cumbersome—

[fol. 435] The Referee: If it becomes too burdensome we will allow you to bring it up again.

Mr. Hogan: All right.

Q. Mr. Costello, would you read this question and answer at the bottom of page 350, the next to the last question and answer (showing witness volume)?

A. Yes, I have read it.

Q. Now does that refresh your recollection?

A. Yes, sir.

Q. You said it did?

A. Yes, sir.

Q. So that what else did you say?

A. I told Neal that if he did not get enough votes for Fay, if he thought he could not put him over, to go along with Kennedy; and I told Sarubbi and Kelly and Rosenthal that I would prefer—that is, I would consider it a nice thing if they went along with Neal, with whoever Neal would suggest.

Q. And you had indicated to Neal—

A. Yes.

Q. —whom you preferred?

A. That is right.

Q. And did you tell Kennedy what support you could give him?

A. Yes.

The Referee: Just read that whole answer, will you, Mr. Reporter?

(Answer read, "I told Neal that if he did not get enough votes for Fay, if he thought he could not put him over, to go along with Kennedy; and I told Sarubbi and Kelly and Rosenthal that I would prefer—that is, I would consider it a nice thing if Fay went along with Neal, with whoever Neal would suggest.")

Mr. Hogan: Is it clear to your Honor?

The Referee: It is.

[fol. 436] Q. Now did Neal vote for Kennedy?

A. Well, I don't know.

Q. Well, you have talked with him dozens of times since then, haven't you?

A. Well, I don't know whether he did or not.

Q. Well, did those leaders that you have mentioned vote for Kennedy?

A. Oh, for Kennedy? I beg your pardon, I am sorry, Mr. Hogan.

Q. Did they?

A. I had Fay in mind. Yes, yes. I am sorry.

Q. There wasn't any voting for Fay, was there?

A. Well, no, not of the ones that I have mentioned.

Q. Isn't it true that Fay withdrew before the voting took place?

A. Well, I take it he did.

Q. So that Neal, Sarubbi, Kelly and Rosenthal, all Assembly District leaders, voted for Kennedy?

A. Yes.

Q. And Mr. Kennedy was elected?

A. Yes.

Q. In April of 1942?

A. Yes.

Q. Did you see Mr. Kennedy shortly after the election?

A. Yes.

Q. And what did he say to you?

A. Well, he thanked me for my assistance, for my help.

Q. Now after April of 1942, when Mr. Kennedy was elected leader, did you continue to see him?

A. Occasionally.

Q. Well, didn't you see him frequently?

A. Well, I would say maybe once a week.

Q. Once a week. And you made appointments to see him?

A. In April?

Q. No, at any time thereafter?

A. Yes.

Q. And he made appointments to see you?

A. Yes.

Q. Now where would you see him? Where did you see him, I should say?

A. Well, I met him in a restaurant of the Waldorf, the [fol. 437] Norse Grill, which is a restaurant in the Waldorf Hotel.

Q. Yes.

A. We had luncheon. I met him at a race track.

Q. Yes. Can you recall any other places?

A. At his office.

Q. Did you see him at your home?

A. At my home.

Q. Any other hotel?

A. At the St. Regis.

Q. Yes. Do you recall any other?

A. I don't believe I do right now.

Q. Did you see him at the Madison Hotel?

A. I don't remember; I might have.

Q. Did you see him at the Essex House? You might have?

A. I might have.

Q. Did you see him at the Essex House?

A. One occasion in the lobby, yes.

Q. And your testimony is that you saw him about once a week on the average?

A. Approximately.

Q. And you have a partner, Phil Kastel?

A. Yes, sir.

Q. Did you and your partner entertain Kennedy in New Orleans?

A. No; Mr. Kastel did.

Q. Mr. Kastel did. Well, did Mr. Kennedy say anything you about it?

A. On his return, yes.

Q. Thanked you?

A. No. Well—well, yes; I would say he thanked me.

Q. Do you know Bert Stand?

A. Yes, sir.

Q. What position in the Democratic Party does he hold?

A. Secretary.

Q. Isn't he Secretary of the Executive Committee?

A. Right.

Q. And the Executive Committee is composed of the Assembly District leaders?

A. Yes, sir.

[fol. 438] Q. When did you meet him?

A. Shortly after Kennedy was elected leader of Tammany Hall.

Q. Who introduced you to him?

A. Kennedy.

Q. Do you recall where you met him?

A. The Norse Grill of the Waldorf-Astoria Hotel.

Q. On one of these meetings with Kennedy?

A. It was not exactly a meeting. I was shaved, and the barber shop is close to the Grill, and I go in there for lunch, and it was an accident that I ran into them.

Q. Well, did you and Mr. Stand and Mr. Kennedy have lunch that day?

A. I joined them at lunch.

Q. Then did you see Mr. Stand frequently after that?

A. Yes.

Q. Did he have your telephone number after that?

A. Yes, sir.

Q. Did he telephone you very often?

A. Yes.

Q. How long have you known Clarence Neal?

A. About 25 years.

Q. How long do you know Dr. Sarubbi?

A. About five years.

Q. How long do you know Mr. DiSalvio, also known as Jimmie Kelly?

A. About 25 years.

Q. And Mr. Abe Rosenthal, the leader of the 8th Assembly District, how long do you know him?

A. About five years.

Q. Now did you have any business transactions with Mr. Kennedy?

A. Never.

Q. Did you have any business transactions with Mr. Stand?

A. No, sir.

Q. Or Mr. Neal?

A. No, sir.

Q. Have you been in the headquarters of the Democratic Party in this county?

A. To my recollection I have been there once.

[fol. 439] Q. When was that?

A. I don't know just when, but it was after Neal—I mean Kennedy was elected.

Q. After Mr. Kennedy was elected, shortly after that?

A. Shortly after that.

Q. With any of the persons we have mentioned?

A. I had an appointment with Clarence Neal for luncheon, and I went up to the club—

Q. That was on 17th Street?

A. —on 17th Street, to meet him.

Q. And Mr. Neal showed you around, did he, conducted you around through the building?

A. Yes.

Q. When did you first meet the respondent, Judge Aurelio?

A. I think it was in the early part of the year, it might have been in February.

Mr. Sheridan: 1943?

The Witness: 1943.

Q. And where did you meet him?

A. At Jimmie Kelly's beefsteak dinner.

Q. And Jimmie Kelly is the leader of the 2nd Assembly District? We have had that established.

A. Yes, sir.

Q. Where was the beefsteak held?

A. I believe it was Webster Hall.

Q. And who introduced you to Judge Aurelio?

A. Dr. Sarubbi, I believe.

Q. Did you have a conversation with Judge Aurelio there? What did he say to you?

A. Nothing in particular, just an introduction.

Q. An exchange of—

A. (Interposing) Greetings and so forth.

Q. Greetings?

A. That is all. We made comments on the beefsteak; a [fol. 440] lot of people, nice people, and so forth and so forth.

Q. Yes. Was anybody else present when you met him?

A. I believe there was Major, a Major.

Q. Some Major?

A. I just don't recall his name, with Judge Aurelio and Dr. Sarubbi. That is all to my recollection at the present time.

Q. None of the persons, the political leaders that we have mentioned?

A. Abe Rosenthal might have been.

Q. Was Mr. Rosenthal there? Now did Dr. Sarubbi talk to you again about Judge Aurelio shortly after this beef-steak?

A. Yes.

Q. And how long would you say it was after the beef-steak, which you said was in February of 1943?

A. Maybe 10 or 15 days later.

Q. And what did Dr. Sarubbi say to you?

A. He asked me what I thought of Judge Aurelio. I said, "Well, he looks to me like a fine man." I said, "What makes you ask?" He said, "Well, I am rooting for him for a Supreme Court Judgeship, he is a very fine man and has a marvelous record; World War veteran, District Attorney for eight or nine years or seven," I just forget, "and Magistrate for ten years with two administrations, representative and democratic, and a fine lawyer, married and has two children."

Q. Dr. Sarubbi told you this?

A. That is right.

Q. Did you know any of this before that?

A. No.

Q. Yes. What did you say; or did he say anything else first, I should say?

A. He said, "Well, maybe you can help by talking to Clarence Neal or whatever leader that you know. We are going to put his name in, and we are looking for a little help."

Q. What else did he say?

A. Well, I just don't recall that now.

[fol. 441] Q. Did he mention any Democratic leader other than Neal?

A. Jimmie Kelly.

Q. Yes. Anybody else?

A. Not that I recall.

Q. Well now, you testified about this subject before the Grand Jury, too, did you not?

A. Yes.

Q. I show you the answer you gave on page 380—

A. Oh, and Mike Kennedy.

Q. Mike Kennedy.

A. I am sorry; Mike Kennedy.

Q. Thank you. Well, what did he say with respect to Kennedy?

A. Well, he said, "If you get a chance to talk to Kennedy, put in a good word for Judge Aurelio."

Q. And what did you say?

A. I told him I would.

Q. You would. And did you speak to Kennedy?

A. I did.

Q. What did you say to him?

A. I told him that I understand they are going to have an Italian on the ticket, and I was spoken to by Dr. Sarubbi, and I would appreciate, I imagine a lot of the leaders would appreciate, if he was on the ticket.

Q. You were not a leader?

A. A fine record; and I quoted what Sarubbi quoted to me.

Mr. Hogan: Will you read the last part of that; I am sorry, I did not get it, Mr. Stenographer.

(Last part of answer read, "And I would appreciate, I imagine a lot of the leaders would appreciate, if he was on the ticket.")

Q. What did Mr. Kennedy say when you told him this?

A. Well, he said he would give it deep consideration; he felt that he was going to have an Italian on the ticket [fol. 442] anyway, he knew of Judge Aurelio, and he thought he was a real fine man; he might be an honor to the ticket.

Q. And this was shortly after the Jimmie Kelly beef-steak, ten-days I think you testified, ten days or two weeks after that?

A. Well, not with Kennedy.

Q. Well, how long?

A. This was Sarubbi. With Kennedy maybe a week or two weeks later.

Q. I see. And did you speak to other leaders after talking to Dr. Sarubbi?

A. I spoke to Jimmie Kelly.

Q. What did you say to him?

A. I told him that it would be a nice thing if he recommended Judge Aurelio.

Q. And what did he say?

A. He said he knows Judge Aurelio, "I certainly will."

Q. Anybody else?

A. Neal.

Q. What did you say to Neal?

A. I practically told him the same thing.

Q. And what did Neal say?

A. He said he would.

Q. Did you talk to anybody else? By "he would" you mean he would back him, is that what you mean?

A. He would back him, yes, sir.

Q. Did you speak to anybody else?

A. Not that I recall.

Q. Did you speak to Stand?

A. Stand is not a leader.

Q. Did you talk to him?

A. Yes.

Q. He is Secretary of the Executive Committee, is he not?

A. Yes, sir. I spoke to him.

Q. And what did he say?

A. He said he would.

Q. Would do what he could for him?

A. Do what he could for him.

Q. Did you speak to Mr. Stand's leader, William Ahearn?

A. No, sir.

[fol. 443] Q. Did you speak to Neustein, leader of the 6th Assembly District?

A. No, sir.

Q. Did you speak to Abe Rosenthal, the leader of the 8th Assembly District?

A. Rosenthal spoke to me.

Q. About the same time, and what did Rosenthal—

A. He spoke—

Q. I beg your pardon?

A. He spoke to me after Sarubbi spoke to me.

Q. Yes. And what was the conversation you had with Mr. Rosenthal?

A. Rosenthal said to me, "I notice you met Judge Aurelio, and he is a fine man;" and he practically gave me his history.

Q. Was that the same night or after the beefsteak?

A. After, this is after the beefsteak; and he was going to make him his candidate for Supreme Court.

Q. Judge Aurelio comes from Mr. Rosenthal's district, by the way?

A. Yes. I said, "Well, I heard all about it, Dr. Sarubbi already has spoken to me. I am going to go along if I can help him any way."

Q. And do what you can for him?

A. Do what I can.

Q. Now will you tell us where you next met Judge Aurelio?

A. I believe I met him at Abe Rosenthal's corned beef and cabbage, he called it, dinner.

Q. Wasn't that in June?

A. Well, then I might have—

Q. Didn't you meet him in March?

A. In March, at my home.

Q. Didn't you meet him somewhere else before you met him at your home?

A. At Abe Rosenthal's daughter's wedding.

Q. Didn't you meet him somewhere before that? Didn't you meet him at Mr. Kennedy's office?

A. Oh, yes. Well, I have got my dates wrong. Yes, I met him.

[fol. 444] Q. Isn't it true that the next time you met him after the beefsteak—

A. Well, that is the next time, yes, that would be the place.

Q. Well, isn't that your recollection?

A. Well, now it is, yes.

Q. You met him at Mike Kennedy's office?

A. Yes.

Q. And where is that?

A. It is in the General Motors Building.

Q. On Broadway?

A. Broadway and 57th Street.

Q. This would be in March of 1943?

A. In March, I presume, yes.

Q. And who was present at this meeting?

A. Mike Kennedy.

Q. Yes.

A. Judge Aurelio.

Q. Yes.

A. Abe Rosenthal, Dr. Sarubbi, Bert Stand. I myself and Clarence Neal went to the office and—

Q. Clarence Neal was there also?

A. No, we went to the office. I and Clarence Neal went to the office, and found this group that I just mentioned there.

Q. Yes; that is, Dr. Sarubbi, Mr. Kennedy, Mr. Rosenthal, Judge Aurelio, Mr. Stand, and then you and Clarence Neal joined that group?

A. Later.

Q. This is in Mr. Kennedy's office, in the General Motors Building, in March of 1943. Now tell us what the conversation was?

A. We went into the office as this meeting was breaking up. They were about leaving, so I—

Q. I did not ask you that. I asked you what the conversation was that you heard. Naturally you cannot testify to any conversation that transpired before you got there. What was the conversation in the office that you heard?

A. I didn't hear much of a conversation.

[fol. 445] Q. What was it?

A. I was told when I went in there that they were there for the specific purpose of talking to Kennedy on Aurelio's behalf.

Q. Who told you that?

A. Well, one of them; it might have been Bert Stand, it might have—one of them, maybe Dr. Sarubbi.

Q. Yes. What else was said?

A. Well, I said, "That is a very fine thing."

Q. How long were you there?

A. About ten minutes.

Q. And what did Mr. Kennedy say to you?

A. He said he was going to give it a lot of consideration.

Q. What?

A. About Judge Aurelio being a candidate.

Q. What did you say to Mr. Kennedy?

A. Well, I would appreciate it.

Q. If—

A. He will do honor to the ticket.

Q. What was that about "appreciate it"?

A. I would appreciate it; he would do honor to the ticket.

Q. Appreciate what?

A. That he would give him consideration.

Q. Who?

A. Judge Aurelio.

Q. You said that to Mr. Kennedy?

A. Yes.

Q. Did you also remind him that you had spoken to him before about Judge Aurelio?

A. I did not remind him; I just took it for granted he knew.

Q. What did you say to Judge Aurelio?

A. I don't believe we had any conversation at all, outside of exchanging greetings.

Q. What did you call him at that time?

A. Judge.

Q. Didn't you call him Tom?

A. I might have called him Tom, but not that I recall.

Q. I beg your pardon?

A. Not that I recall.

[fol. 446] Q. Well, you did after that, didn't you?

A. Yes.

Q. You called him by his first name?

A. Yes.

Q. What was your conversation with Judge Aurelio at this time?

A. At that particular time?

Q. Yes.

A. We didn't have much of a conversation; exchanged greetings.

Q. Did you have any conversation?

A. Not that I recall.

Q. Did he say anything to you?

A. He may have repeated to me, "I would appreciate it if you keep punching for me, root for me."

Mr. Hogan: Will you repeat that last?

(The last answer was read.)

Q. Well, did he say that?

A. Well, he might have.

Q. Is that your best recollection, that he said that?

A. That is my best recollection, yes.

Q. Then he knew that you had been continuing to punch for him, is that right?

A. Yes.

Q. Did he thank you for doing that?

A. Well, he didn't—yes, naturally.

Q. And he asked you to continue punching for him?

A. Yes.

Q. And Mr. Kennedy said that he would consider it?

A. Yes.

Q. By the way, do you belong to any Italian Societies?

A. No, sir.

Q. You are not a Society man?

A. No, sir.

Q. Did you tell Judge Aurelio that you could get Italian societies to support him?

A. I might have told him that I would try.

[fol. 447] Q. You don't belong to any Italian societies, do you?

A. No, I do not.

Q. Now the question is, did you tell him, do have any recollection that you told Judge Aurelio that you could get support for him from Italian societies?

A. I have no recollection, but I say I might have, it is possible.

Q. Even though you don't belong to any?

A. I do not.

Q. You testified about this before the Grand Jury, did you not?

A. To my best recollection, yes.

Q. Now I ask you if you did not give this answer to the question I am about to read:

"Q. You didn't tell Aurelio that you could get societies to support him?"

"A. No."

Now did you give that answer?

A. Yes.

Q. And was that a truthful answer?

A. Yes.

Q. Now where did you next see Judge Aurelio?

A. What month are we talking about?

Q. Well, you have told us about the meeting at Mr. Kennedy's office in March. Now where was the next meeting?

A. The next meeting was at my home, I believe.

Q. At your home. Now how did that come about?

A. Abe Rosenthal spoke to me about Judge Aurelio, said I should know him a little better, he is a very fine man.

Q. Yes.

A. I said, "Some day bring him up to my home or some evening for dinner, your Mrs. and his Mrs. come up."

Q. I see.

A. He said, "All right, I will let you know." A few days later he called me.

Q. Who called you?

A. Rosenthal.

Q. Yes.

A. He said, "We will accept the invitation." They came to my home for dinner.

Q. Now who was present at your home on that occasion?

A. Mr. and Mrs. Neal.

[fol. 448] Q. That is, Clarence Neal, the district leader?

A. That is right.

Q. And his wife?

A. That is right.

Q. Who else? Well, who came with Judge Aurelio?

A. Mr. Aurelio, Judge Aurelio, and Mrs. Aurelio.

Q. And weren't the Rosenthals there also?

A. Yes, Rosenthal and Mrs. Rosenthal.

Q. And Mrs. Rosenthal. Now how long did you remain at your home? How long did the company remain at your home?

A. Oh, I would say about an hour.

Q. And where did you go from your home?

A. Then I called up and made reservations at the Copacabana Restaurant for dinner.

Q. And all of those you have mentioned went to the Copacabana?

A. Yes, sir.

Q. What time was it you got there, about?

A. A little after seven.

Q. And how long did you remain there, you and Judge Aurelio and the others?

A. Oh, I would say until about ten o'clock.

Q. About three hours?

A. Yes.

Q. Now when was the next meeting after the meeting at which you met at the Copacabana?

A. The next meeting was in March.

Q. Yes, and what was the occasion?

A. At the Rosenthal's wedding.

Q. You mean Mr. Rosenthal's daughter's wedding?

A. Mr. Rosenthal's daughter's wedding.

Q. Yes. And Judge Aurelio was present?

A. Yes.

[fol. 449] Q. And you were there?

A. And about a thousand others.

Q. And you talked to him?

A. Well, I—yes.

Q. During this period after the meeting at Mr. Kennedy's office, did you talk to Judge Aurelio about the nomination?

A. I don't believe I did.

Q. On one of these occasions didn't you talk to him about the nomination?

A. I don't believe I did.

Q. Well, didn't you talk to him about his chances for the nomination in March?

A. In March?

Q. In March or April?

A. I might have.

Q. I show you questions and answers at page 395, and ask you if they do not refresh your recollection, beginning here (indicating), at almost the bottom of the page.

A. Yes.

Q. The answer is that you did speak to him in March?

A. Yes.

Q. And what did you say when he asked you how his chances were?

A. Well, I probably—he asked me, “What do my chances look like?” I said, “Well, I am rooting for you, I have an awful rooting interest, and I am punching for you. It looks like your chances will be all right.”

Q. And that was after speaking to Kennedy?

A. That is right.

Q. And you continued to speak to Kennedy?

A. That is right.

Q. And were you talking to Mr. Rosenthal during this period also?

A. Well, I might have met Rosenthal.

Q. And you would tell him about the same thing?

A. Yes, I imagine I would have.

Q. And you told Judge Aurelio that you were going to continue to work for him?

A. Yes.

[fol. 450] Q. Now did Dr. Sarubbi speak to you about Judge Aurelio in March and April and May, those months?

A. Yes.

Q. Did he speak to you often about him?

A. As often as I have seen him.

Q. And what did he say to you?

A. Told me that his chances looked very good, that he is out trying to convert as many executives—that is, on the Committee, as possible.

Q. And what did you say?

A. I told him that I was doing the same thing; I spoke to Kelly and Neal and so forth and so on.

Q. And weren't you seeing Dr. Sarubbi quite often during this period?

A. Yes. Well, he was treating me, he was coming up often, yes.

Q. That is before Dr. Sarubbi became ill?

A. That is right.

Q. All right. Now can you tell us when the next meeting with Judge Aurelio was?

A. At the Martinique.

Q. I beg your pardon?

A. Martinique Restaurant.

Q. No. Just to refresh your recollection, didn't you meet him at the corned beef and cabbage dinner? I think you have testified to that?

A. I did testify to that.

Q. Yes.

A. Yes.

Q. That was in June, wasn't it?

A. In June, yes.

Q. And whose dinner was it?

A. Rosenthal's.

Q. He is the leader of the 8th Assembly District?

A. That is right.

Q. And this was a district gathering, isn't that true?

A. A district gathering.

Q. And was Mr. Kennedy there?

A. No.

Q. Was Judge Aurelio there?

A. He was there.

[fol. 451] Q. And you had a conversation with Judge Aurelio?

A. A very short conversation.

Q. Along the same lines as we had before?

A. No, we did not; I did not talk politics at all.

Q. And he did not?

A. No, sir.

Q. I believe you testified that you were seeing Kennedy frequently between March and July, is that right?

A. Yes.

Q. And Neal?

A. Yes.

Q. And Bert Stand?

A. Yes.

Q. And you were talking to Mr. Kennedy about Judge Aurelio?

A. I spoke to him, yes.

Q. Plugging and punching for him, I think those are your words?

A. That is right.

Q. Now do you recall a conversation with Mr. Kennedy in June or July about Judge Aurelio, on the subject of a promise?

A. I believe I do.

Q. Well, tell us; and would you say that was in June or July?

A. Yes, I believe it was June or July.

Q. Tell us what—

A. (Interposing) I got a phone call from Bert Stand.

Q. Yes.

A. And he told me that Kennedy was thinking of putting an Irish Catholic on the ticket. Bert Stand said, "You ought to talk to that fellow, because he is—in other words, he is cooling off on the Italian candidate." I told him I would.

Q. And did you see Mr. Kennedy?

A. I saw Mr. Kennedy.

Q. And what did you say to him?

A. I said, "I understand that you are sort of cooling off on Aurelio."

Q. Yes.

A. I said, "You made a promise, you should live up to it. You are a Tammany Hall leader, your word should be [fol. 452] your bond. I know my word is my bond. You made a commitment and should live up to it." Kennedy said he never had any ideas of not living up to it.

Q. And did he give you a promise at that time?

A. I believe he gave me a promise at the time, yes. In order for me to tell him that he must have given me a promise.

Q. Well, when did he first make the promise to you? Because you have just testified that you told him, "A promise is a promise, and you ought to live up to it." When did he first make it to you?

A. Well, he must have made it prior to that.

Q. That would be some time in April?

A. April or the early part of June.

Q. And what did he say in April or the early part of June?

A. He says he would give it a lot of consideration.

Q. Did he make you a promise he would nominate Aurelio?

A. Later he said that "I am going to put him on the ticket."

Q. Well, can we say definitely that in June or July he told you that he was going to put Judge Aurelio on the ticket for the Supreme Court?

A. You can say definitely that before I spoke to him on that subject, about him changing his mind, that he made a promise that he was going to put him on the ticket.

Q. To you?

A. That is right.

Q. All right. Did you speak to Mr. Kennedy about primary contests at any time?

A. No. We might have spoke casually about, there was a lot of contests.

Q. Difficulties he was having? Do you remember whether you were in New York on primary day, August 10th?

A. I was not in New York.

Q. Do you recall when you came back to New York after primary day?

A. I might have come back the following day or two days [fol. 453] later or something, very shortly, maybe the next day.

Q. You mean August 11th or 12th?

A. Yes.

Q. Now do you remember Bert Stand telephoning a day or two days after primary day?

A. Yes.

Q. And what did he say to you on the subject of judicial nominations?

A. Well, I believe it was on the same subject, that Kennedy was cooling off again, or something.

Q. Yes. And did you see Mr. Kennedy after Mr. Stand had told you that he was cooling off?

A. Yes.

Q. And what did you say to him?

A. I reminded him.

Q. Of the promise?

A. Of the promise.

Q. And what else did you say about the promise?

A. Well, I told him, "Now you have got to be either man or mouse. Come out with it. Are you really going to go along with it? If not, declare yourself."

Q. And what did he say?

A. "You are the boss of Tammany Hall, you are the boss so do what you please, but at least come out with it."

Q. And what did he say to that?

A. He told me he was definitely going to have him on the ticket.

Q. In other words, he repeated the promise?

A. Yes.

Q. Do you know whether or not Dr. Sarubbi was sick during this period?

A. He was.

Q. This was after primary day, August 11th?

A. Yes.

Q. And the Judicial Convention, you recall, was August 23rd, isn't that true?

A. Right.

Q. The Democratic Judicial Convention. Now did you talk to Dr. Sarubbi over the telephone on the subject of Judge Aurelio?

A. I don't believe I did.

Q. Did he telephone you?

A. No, sir.

Q. About ten days before the Convention?

A. No, sir.

[fol. 454] Q. I show you your Grand Jury testimony on page 400. Will you read that and tell me if it refreshes your recollection (handing witness volume)?

A. Where is it?

(Mr. Hogan indicates.)

A. (Continued) Yes, I remember. I don't remember the conversation, I remember him calling me.

Mr. Sheridan: Would your Honor let us have a drink for five minutes?

The Referee: What did he say?

Q. On this subject of Judge Aurelio?

A. Well, I just don't remember on the subject of Judge Aurelio.

Q. You do remember him calling you?

A. Calling me.

Q. Well, do you recall any reference to a Mr. A. over the telephone?

Mr. Sheridan: Now I object to that, your Honor. That is accomplishing indirectly, getting in complications. Let him ask, instead of Mr. A—

The Referee: Yes, but has he not exhausted his recollection? He first says that he has no recollection of talking about, or what the talk was with Mr. Sarubbi. Now he is calling attention to a Mr. A. I will allow that, on the ground that his recollection is exhausted.

Mr. Sheridan: Your Honor, there is no proof here; in other words, if I spoke to you you would recognize my voice if you had known me—

The Referee: It may be an entirely immaterial matter, Senator.

Mr. Sheridan: All right.

[fol. 455] The Referee: I appreciate that. It is very difficult to tell what these conversations amount to.

Mr. Sheridan: Any conversation of my client is perfectly all right, any conversation with Judge Aurelio.

The Referee: Yes, I know.

Mr. Sheridan: But with a witness or somebody saying, "Yes, I said it," you could prove almost anything.

The Referee: That is true.

Mr. Sheridan: You could do a terrific smear job, you know, by just phrasing questions, and there is no way out of it.

Mr. Hogan: Mr. Sheridan, I am asking the witness, he admits that he had a conversation.

Mr. Sheridan: Surely, and then you are incorporating in your question what purports to be embodied in a telephone communication.

The Referee: No, as I understand it, the witness has said that there was a telephone conversation, but that he cannot recall the contents of that conversation.

Now in order to refresh his recollection, he having said he had nothing in mind, the District Attorney asks, was there something about a Mr. A.? Now that can be answered yes or no.

Q. Do you recall that there was a telephone conversation with Dr. Sarubbi, in which Dr. Sarubbi referred to a Mr. A., and you referred to a Mr. A.?

A. No.

Q. You don't?

A. I recall of Dr. Sarubbi calling me, and I don't remember the conversation. That is the day I went down to meet him, down to his home to visit him.

Q. You went to his home?

A. To his home, to visit him.

[fol. 456] Q. You have no recollection of the conversation?

A. No recollection of the conversation on the telephone.

The Referee: Now Mr. District Attorney, just a moment here. What hours are customarily held in this Court House?

Mr. Hogan: I am sure that your wishes will be most agreeable to Senator Sheridan and me.

Mr. Sheridan: What they usually do is, they work until one or until the Judge gets too tired, and then he takes a five minute recess at about 12:00 o'clock, and re-convenes the Court with all convenient speed, about ten after twelve; and he does the same thing in the afternoon, and you finish about 4:00 or 4:30. If your Honor wants to work late it is perfectly agreeable.

Mr. Hogan: Perfectly.

The Referee: Well, we will take a short recess now, for five minutes.

Mr. Sheridan: Thank you.

The Referee: And then we will go on until one o'clock.

(Short Recess.)

FRANK COSTELLO, resumed the stand:

By Mr. Hogan (Continuing):

Q. Now, Mr. Costello, do you recall speaking to Bert Stand on the telephone again, on the subject of the Judicial Convention, about a week before the convention—a [fol. 457] week or ten days before the convention?

A. I believe I do.

Q. And what did he say to you on that occasion? What did Stand say to you?

A. I believe he spoke about Mike Kennedy again.

Q. What did he say?

A. That he was sort of trying to detour from Aurelio.

Q. And what else?

A. And that I should have another talk with him.

Q. Well, did Stand say he had talked to Kennedy?

A. I don't remember that, Mr. Hogan.

Q. Well, was this his own idea, Stand's, or was he talking to Kennedy?

A. Oh, yes, Kennedy must have spoken to him on the subject.

Q. Didn't he tell you he had talked to Kennedy?

A. I believe he did, yes.

Q. And you say that he indicated that Kennedy was attempting to detour from the promise, is that it?

A. That's right.

Q. Now, did Mr. Stand say anything about to whom he was detouring?

A. For Irish Catholic or something.

Q. Did he mention any name?

A. No.

Q. Did he say anything else to you?

A. Well, I just don't recall the conversation, but he did tell me I should see him and pin him down to it, or something—you know.

Q. Well, now, I want to show you your Grand Jury testimony at page 403 and ask if that doesn't refresh your recollection (showing volume to witness)?

A. Yes.

Q. Well, now, your recollection having been refreshed,

what else did Kennedy, or did Stand say to you on the subject?

A. Well, that if I stand pat, that it would be all right.

[fol. 458] Q. Did he say anything to you about "Irish Charm"?

A. That he has got that "Irish charm" or something—"It's the Irish charm again," or something of that sort; "don't let him talk you out of it."

Q. And that you were to stand pat?

A. Stand pat, that is right.

Q. Now, did you see Mr. Kennedy after this conversation with Bert Stand?

A. I believe I did.

Q. Do you recall when you did?

A. No.

Q. Well, was it a day or two later?

A. It could be.

Q. Is that your recollection?

A. Yes.

Q. And where did you see him?

A. I don't recall right now just where I saw him, but I do recall seeing him and talking to him on the subject.

Q. Well, let's see if we can fix the date. Do you recall meeting Mr. Kennedy at Longchamps' Restaurant?

A. Yes.

Q. Now, you recall testifying to that. That was on Tuesday, August 17th, about six days before the convention?

A. Yes, I believe it was.

The Referee: How many days?

Mr. Hogan: Six.

Q. And this meeting that we are talking about occurred before the Longchamps' meeting, didn't it?

A. I believe, yes. I believe so.

Q. But you don't recall where?

A. I don't recall where.

Q. Now, what did you say to Mr. Kennedy on this occasion?

A. Oh, I probably told him—I couldn't give you the exact words, but I tried to emphasize it, as I did prior to that.

[fol. 459] Q. You told him that he had made a promise to you, and that he had to keep it?

A. That's right.

Mr. Sheridan: Now, the witness didn't testify to that.

Mr. Hogan: I think he testified to that before, Senator Sheridan.

Mr. Sheridan: Now, ask him what he said, not what you think he said.

Q. Tell us then what you said to Mr. Kennedy at this time, on or about August 16th.

A. Well, I couldn't give you the exact words—

The Referee: No, in substance.

Q. Give us the substance.

A. I might have told him, "I understand you are trying to get away from Aurelio, and you want to put an Irish Catholic or something on the ticket."

Q. Yes?

A. And he said, "No, I am going to go along with him."

Q. Anything else?

A. Not that I recall.

Q. So he reassured you at this time?

A. Practically.

Q. Did you tell Mr. Kennedy what Mr. Stand had told you?

A. I don't recall. I might have, but I just don't recall.

Q. Well, if you did, did you tell Mr. Kennedy that it came from Mr. Stand?

A. If I did, yes. I probably would have.

Q. Did you tell Mr. Stand thereafter what Mr. Kennedy had told you?

A. Yes.

Q. That Judge Aurelio was to be on the ticket?

A. That is right.

[fol. 460] Q. Now, do you recall seeing Mr. Rosenthal about this time?

A. What dates? You are in where?

Q. This is on or about August 16th; August 16th was a Monday. Do you remember meeting him at the Waldorf?

A. Well, I don't know the exact date, but I met him there quite often.

Q. About that time?

A. Around that time.

Q. And what was the conversation you had with Mr. Rosenthal on the subject of Judge Aurelio?

A. Well, the conversation might have been that his chances looked very, very bright.

Q. You told that to Mr. Rosenthal?

A. Yes.

Q. Now, you recall that you had a meeting at Long-champs on Tuesday, August 17th?

A. Yes.

Q. With whom?

A. With Mike Kennedy, Clarence Neal and Bert Stand and myself.

Q. Four of you. And what time was the meeting set for?

A. 10:00 A. M.

Q. And who made the appointment?

A. The appointment was made, I believe, the day previous by Bert Stand.

Q. Was the time for the meeting changed on Tuesday?

A. Yes, sir.

Q. And who suggested that the time be made earlier or later?

A. Mr. Kennedy.

Q. And was it later?

A. Later.

Q. What time was it changed to?

A. Oh, changed to about 11:00, 11:30, I presume.

Q. Now, was that—did you have a conversation with Mr. Kennedy early that morning?

A. Yes.

[fol. 461] Q. And was anything said about changing the time, in the conversation?

A. Yes, sir.

Q. Well, suppose you tell us what Mr. Kennedy said to you?

A. Mr. Kennedy called me about 9:00 A. M.

Q. Yes.

A. And said, "We have an appointment at Longchamps"—I believe it was 11:00 or 11:30, and he says—no, 10:00 o'clock. He says, "Can you push it back for 11:00 or 11:30?" I says, "What's on your mind?" "Well, I prefer to see you alone first."

Q. Yes?

A. That is all.

Q. Now, did you then call Bert Stand?

A. So I said, "I'll arrange it. I will call Bert Stand."

Q. And you called him?

A. And I called Bert Stand.

Q. Now, when you spoke to Bert Stand, did Mr. Stand say anything to you about the Judicial Convention?

A. That particular morning?

Q. Yes.

A. No.

Q. You have no recollection of Mr. Stand saying anything to you about the Judicial Convention?

A. No, sir.

Q. Well, I show you this Grand Jury testimony on page 414 (indicating). I observe on page 413 that it has reference to the telephone conversation, and on page 414 (indicating)—

A. Well, he might have. I believe he did.

Q. Well, what is your recollection of what he said at this time?

A. I believe he says that Kennedy was in the same frame of mind, and he had Fay in mind, or one of Fay's candidates, or something.

Q. He had to do something for Fay?

A. Something, yes.

Q. That is Congressman Fay?

A. Congressman Fay.

[fol. 462] Q. The leader of the 12th Assembly District?

A. 12th Assembly.

Q. Well, did you say anything with respect to Judge Aurelio in connection with Congressman Fay's candidate?

A. No.

Q. Did you see Mr. Kennedy that morning before he go to Longchamps?

A. Yes.

Q. Where?

A. At my home.

Q. Now, did you say anything to Mr. Kennedy with respect to the conversation you had with Stand on the subject matter of Fay's candidate for the Supreme Court?

A. No.

Q. You did not?

A. No, not that particular morning, no.

Q. Now, I show you your Grand Jury testimony again, bottom of page 414 (indicating)—

A. Well, I might—

Q. And the top of page 415 (indicating).

A. Yes.

Q. You did discuss it that morning?

A. Yes, yes.

Q. Well, tell us what you said.

A. I told him—the substance is that there was a rumor around of him going with Fay for Byrnes.

Q. And whom did you mean by Byrnes?

A. Byrnes is a City Court Judge, I believe.

Q. Yes.

A. I don't even know the gentleman.

Q. And what else did you say?

A. And he told me, he says, "No, he was going with Aurelio.

Q. So he reassured you again that he was going for Aurelio?

A. That's right.

Q. Did you tell him you got this information from Stand?

A. I don't remember if I told him from Stand or who I got it from.

[fol. 463] Q. Now, what time was it you met him that morning?

A. It might have been around 10:00 o'clock.

Q. And there wasn't anybody else present—just you and Mr. Kennedy?

A. That's right.

Q. That is at your home?

A. At my home.

Q. Now, did you and he go from there to Longchamps?

A. Yes, sir.

Q. What time did you get there?

A. 11:00, 11:30.

Q. Was Mr. Neal and Mr. Stand in Longchamps also?

A. Yes.

Q. Well, what conversation did you and Mr. Kennedy and Mr. Stand and Mr. Neal have in Longchamps?

A. Mr. Kennedy called me at 9:00 o'clock and told me to push that appointment. And I told him that I would call upon Bert Stand and he could call upon Clarence Neal, "and have him also call you"—let it appear it was my suggestion to push it back to 11:00 or 11:30—because he wanted to talk to me alone.

Q. "You" in this case meaning Mr. Kennedy?

A. That's right.

Q. Go ahead.

A. Which was done. And about 10:00 o'clock Mr. Kennedy comes to my home. He said, "The reason I want to talk to you alone is because I have something to say about Dr. Sarubbi. He is a very sick man, and his District is going to the dogs. And I'm a new leader, I want to build up the organization, and I think he should resign."

Q. This is in addition to your conversation about Judge Aurelio?

A. That's right.

Q. Yes?

A. "I think he should resign." He says, "Now, I made an appointment this morning, thinking that I would make the suggestion, but I haven't got the nerve, because Clarence [fol. 464] Neal is going to be there, and he being the leader, it don't look so good for me." He says, "I wish you would do me a favor, being that Sarubbi is a very dear friend of yours—suppose you make the suggestion."

Q. Mr. Kennedy, the leader of the Democratic Party in this County, asked you to suggest to Clarence Neal—

Mr. Sheridan: Now, your Honor, are we going to have an unnecessary repeating of the question?

The Referee: No, I don't think so.

Mr. Sheridan: You understand it. I understand it—

Mr. Logan: Maybe I don't understand it.

Mr. Sheridan: Oh, I think you do.

The Referee: I think the question has been fully answered. If there is anything more you want to ask about it, go ahead and ask it. He has said that Kennedy asked him to suggest to Sarubbi his resignation—Sarubbi's resignation.

Q. I withdraw the partly framed question then, and ask you if anything else was said at that time.

A. I told him, I didn't think it was right, "But I will bring the subject up not to embarrass you."

Q. How long had Dr. Sarubbi been sick?

A. Quite some time now, a few months.

Q. Months in August? Hadn't you been seeing him in July?

A. Yes.

Q. Didn't you ask him to make telephone calls for you in July to California?

A. Yes. Well, he got sick after that.

Q. After July?

A. That's right.

Q. And this is August 17th, so it would be more nearly [fol. 465] a month, wouldn't it?

A. Oh, yes. Well, I say months, I mean months to date.

Q. Oh, I see. Now, at Longchamps what was the conversation between you and Mr. Kennedy, and Mr. Neal and Mr. Stand?

A. Well, when we got to Longchamps I was the one that suggested, I says, "Mike, it looks like the doctor is in very bad health. I think we should tell him—that is, I will tell him to resign; it is better for him, he should be no leader; he is too sick"—which I never did tell Dr. Sarubbi.

Q. And what did Mr. Kennedy say?

A. (Continuing) And never intended to tell him.

Q. You didn't tell that to Mr. Kennedy?

A. No, I didn't tell that to him, no. I was practically deceiving him, because I didn't have the nerve.

Q. Yes. What else was said?

A. He says, "Well, I don't think it would be a bad idea."

He says, "I was going to suggest it myself, but I didn't think it was fair. I am glad it comes from one of his dear friends."

Q. This is Mr. Kennedy saying this?

A. That's right.

Q. What did Mr. Neal say?

A. Oh, Mr. Neal objected to it. He thought it was out of line, that it wasn't fair, and just made some comments on it.

Q. Now, how long were you there at Longchamps?

A. Oh, I don't know; maybe an hour, an hour and a half. I don't know.

Q. Any conversation about Judge Aurelio?

A. No.

Q. No further conversation between—

A. No.

Q. (Continuing) —you and Mr. Kennedy?

A. Not that I recall.

Q. After your meeting at Longchamps on Tuesday, August 17th, do you recall Bert Stand telephoning you once more about Judge Aurelio?

A. (No answer.)

Q. Let me make it more specific: Do you recall that [fol. 466] on Thursday, August 19th, you were at the Martinique Night Club?

A. Yes.

Q. That is four days before the Judicial Convention. Do you recall Bert Stand telephoning you on Thursday morning, August 19th?

A. I don't recall that, unless you refresh my memory.

Q. Now I show you—

Mr. Sheridan: Mr. Hogan, I take it you are only showing him his own testimony, not Mr. Stand's testimony?

Mr. Hogan: No. This is Mr. Costello's testimony.

Q. I show you your testimony before the Grand Jury on page 416 at the bottom (indicating), and going over to 417.

A. I don't remember—

Q. Well, just tell us what parts of it you do remember.

A. I don't remember that at all, Mr. Hogan. I might have—we might have had a conversation, but I just don't know the substance of the conversation.

Q. You do recall a conversation with Mr. Stand that morning?

A. He might have called me.

Q. Do you deny that he called you that morning?

A. No, I wouldn't denying it.

Q. Will you give us to the best of your recollection what he said on Thursday morning, the day you had the party at the Martinique?

A. No, I couldn't give you—I don't recall.

Q. Didn't you give this question—wasn't this question asked you, and didn't you make this answer before the Grand Jury—

Mr. Sheridan: Now—

Mr. Hogan: This is just, Senator, as to an admission [fol. 467] of the conversation. There is nothing about the conversation there. "The 19th, the morning of the day you celebrated at the Martinique." That is the form of a question. And the answer is, "Well, I really don't know how to explain that. I will admit to the conversation."

Q. Now, didn't you testify in that fashion?

A. Yes.

Q. And that was truthful?

A. If it is there, it's truthful, yes.

Q. Now, you did admit to the conversation at that time?

A. Yes.

Q. You haven't any recollection at the present time?

A. No.

Mr. Hogan: Your Honor, I would like permission to read the conversation to see if it refreshes his recollection.

The Referee: Have you shown it to him?

Mr. Hogan: Yes.

Q. You wish to read it again—

The Referee: Well, he hasn't answered the question definitely, whether it does or does not refresh his recollection.

The Witness: Is this the morning after the Martinique?

Q. This is the morning of the Martinique.

A. Oh, the morning—

Q. Will you read beginning at the bottom of page 416 (showing volume to witness)?

A. I don't recall that conversation.

[fol. 468] The Referee: It doesn't refresh your recollection?

A. No, sir.

Q. Did you see Mr. Kennedy on that day, on Thursday?

A. Yes.

Q. Did you speak to him again about Judge Aurelio?

A. No, sir.

Q. You are sure you didn't—

A. Oh, I told him that I had a dinner appointment with Judge Aurelio—would he join me?

Q. Yes.

Mr. Hogan: Excuse me just a moment—

The Referee: Certainly.

Q. All right. You say that you didn't talk to Mr. Kennedy about Judge Aurelio on Thursday before the meeting in the Martinique?

A. I don't believe I did.

Q. Well, I show you testimony at page 419, your testimony (indicating), and over here on page 420 (indicating).

A. Yes. That is the day before.

Q. No. Doesn't it say there you saw Kennedy that day before you went to the Martinique?

A. Yes. The day of the Martinique.

Q. Yes. That is what I am asking you. Before you went to the Martinique, did you have any conversation

with Kennedy about Judge Aurelio? Does that refresh your recollection, the testimony on page 420?

A. Yes. Well, I thought I testified to that. Well, that is the day before the Martinique.

Q. The day before the Martinique.

A. Yes.

Q. But after Longchamps, which was Tuesday, and the Martinique was Thursday?

A. That is right.

[fol. 469] Q. So that would be Wednesday, August 18th?

A. That is right.

Q. Now, tell us what you said to Mr. Kennedy and what Mr. Kennedy said to you on August 18th, Wednesday.

A. Well, I just repeated the same rumors about Judge Aurelio.

Q. And was that because you had another conversation with Mr. Stand?

A. Yes. Because Mr. Stand told me that—I believe that he spoke to Roosevelt or something—President Roosevelt and Roosevelt had suggested someone else.

Q. Who spoke to President Roosevelt?

A. Mike Kennedy.

Q. About whom?

A. About putting somebody on the ticket.

Q. Who?

A. Gavegan, or someone.

Q. Do you mean Stand told you that?

A. Yes.

Q. Did he say that that had happened, or that is what Mr. Kennedy is going to tell you?

A. That is what Kennedy was to tell me.

Q. And what did you say—this is what Stand told you?

A. Yes.

Q. And then you spoke to Kennedy?

A. I spoke to Kennedy.

Q. And you told him you had heard that?

A. Yes.

Q. And what did he say?

A. He said, "No, I'm going to go along with Aurelio."

Q. So that this was another time he reassured you?

A. Yes, that's right.

Q. Now, did you call Judge Aurelio on Thursday, August 19th, four days before the convention?

A. Yes.

[fol. 470] Q. At his home?

A. At his home.

Q. And what did you say to him?

A. I invited him for dinner.

Q. Where?

A. At the Martinique.

Q. This was after Mr. Kennedy had told you finally that Judge Aurelio was to be on the ticket?

A. Yes.

Q. Did you invite anybody else to the Martinique?

A. I told the Judge, Judge Aurelio, to invite Abe Rosenthal, his leader.

Q. Yes?

A. He told me he would try, but they had an executive meeting on Thursday, and he didn't think he could make it. "But I'll try."

Q. Did Judge Aurelio and Mr. Rosenthal come to the Martinique?

A. Yes.

Q. Where is that, by the way?

A. It's on 57th Street, off of 6th Avenue.

Q. And was Mr. Kennedy also there?

A. Yes.

Q. Mr. Stand?

A. Yes.

Q. Mr. Neal?

A. Yes.

Q. And what conversation did you have with Mr. Kennedy at that time?

A. No conversation of any importance politically.

Q. You had met him at some bar just previous to that, had you not?

A. Yes. I met him in the St. Regis bar—met him and Bert Stand.

The Referee: Met whom?

Q. You met Mr. Kennedy and Bert Stand in the St. Regis bar?

A. Myself and Clarence Neal were having a drink there,

a cocktail, and I told him—this was around 5:00 o'clock—and I told him I had an appointment with Judge Aurelio for dinner; Abe Rosenthal is going to be there. In fact, [fol. 471] I invited Savarese, which is a very very dear friend of Judge Aurelio, at this dinner. "Will you join us?"

He says, "I can't. We have an executive meeting." I says, "Well, come down just for one drink anyway," which he did. And we all met about 7:00, 7:15 at the Martinique.

Q. Now, what did Mr. Kennedy say to Judge Aurelio at the Martinique?

A. Well, there was nothing I can say he said to him, but they had a little chat, and Kennedy said, "Let's not talk"—I overheard Kennedy say, "Let's not talk politics," and he shook hands and says, "Don't worry about it"—some words to that effect.

Q. Mr. Kennedy told Judge Aurelio not to worry about it?

A. Some words to that effect, yes.

Q. Did you congratulate Judge Aurelio at that time?

A. Well, I believe I made the comment, I says, "Well, it looks like you're home"—something of that sort.

Q. Did he thank you?

A. Well, yes, in a way he thanked me. Yes, sure he thanked me.

Q. How long did you remain there with Judge Aurelio?

A. About 10:30.

Q. I don't believe we got the time when you assembled at the Martinique?

A. Around 7:15, I think.

Q. So you were there from 7:15 to 10:30?

A. 10:30.

Q. With Judge Aurelio and others?

A. Right after the show; yes. We stood there for the show.

Q. Did Mr. Kennedy stay during that length of time?

A. No. Mr. Kennedy left about—after his one drink; he might have left at 7:30.

Q. He had a meeting?

A. Yes. Mr. Neal also left.

Q. He had a meeting?

A. Yes.

[fol. 472] Q. Did Mr. Rosenthal have a meeting?

A. Also left, yes.

Q. Then Mr. Rosenthal came back?

A. He came back.

Q. And stayed until 10:30, is that it?

A. Yes.

Q. Now, you have testified that you telephoned Judge Aurelio to invite him to come to the Martinique with his leader, Mr. Rosenthal?

A. Yes.

Q. Did you ever phone him at any other time?

A. I don't believe I did.

Q. When did you give him your telephone number?

A. Well, I couldn't tell you the exact date, but I gave it to him prior—I think it was prior to that I gave him my phone number.

Q. You mean prior to the Martinique?

A. Prior to that Thursday, yes.

Q. Do you recall that Judge Aurelio telephoned you on August 24th, the morning after the convention?

A. Yes.

Q. And what did he say to you?

A. Called me and thanked me. He was so elated and excited.

Q. Now, he didn't say, "I am elated and excited," did he?

A. No, no. I'm saying he was.

Q. Just tell me what you recall he said.

A. He thanked me and he told me that—he described that he was nominated the previous night, that he was nominated first, and Gavagan second, or something.

Q. Yes. Anything else?

A. And he expressed his gratitude.

Mr. Hogan: I think you said you have no objection to reading any conversation which Judge Aurelio actually had with Mr. Costello?

Mr. Sheridan: None whatsoever.

[fol. 473] Q. See if this doesn't refresh your recollection then, and isn't this the conversation which you had on August 24th:

"Judge Aurelio: Good morning, Francesco, how are you, and thanks for everything.

"Costello: Congratulations. It went over perfect. When I tell you something is in the bag, you can rest assured.

"Judge Aurelio: It was perfect. Arthur Klein did the nominating, first me, then Gavegan, then Peck. It was fine.

"Costello: That's fine.

"Judge Aurelio: The doctor called me last night to congratulate me. I'm going to see him today. He seems to me improving. He should be up and around soon, and should take the train for Hot Springs.

"Mr. Costello: That's the plan.

"Judge Aurelio: Joe Loscalzo congratulated me. That's a fellow you really should do something for. He certainly deserves something.

"Costello: Well, we all will have to get together, you, your Missus, Joe and myself, and have dinner some night real soon.

"Judge Aurelio: That would be fine, but right now I want to assure you of my loyalty for all you have done. It's undying.

"Costello: I know. I'll see you soon."

Now, you recall that conversation?

A. Mr. Hogan, I did not testify to that conversation. I conceded that it was possible, that conversation.

[fol. 474] Q. Yes. You did have the conversation?

A. But I didn't testify to that in the Grand Jury room.

Q. Does this refresh your recollection that you had this conversation, substantially?

A. Yes, I could have had it substantially.

Q. And it's substantially—

A. Yes.

Q. —true, isn't it?

A. That's right.

Q. Is there any word you want to quarrel with in the conversation?

A. No.

Q. Do you recall what time in the morning it was?

A. Well, between 8:00, 8:30.

Q. No, he refers to you—that is, Judge Aurelio refers to you as Francesco. What did you call him?

A. Tomasso.

Q. That is what, an Italian diminutive?

A. "Thomas", yes.

Q. I guess it is just Italian for "Thomas."

Mr. Sheridan: Oh, yes. He lived in New York on the East Side. It was Giovanni Giuseppi, et cetera.

The Referee: There is no Don Giovanni in this case.

Mr. Sheridan: We have a large Italian population.

The Referee: Well, we all know some things we even have them—

Mr. Sheridan: In Buffalo.

The Referee: (Continuing) —in Buffalo.

Mr. Sheridan: And Polaks. We had a fellow called Wojciechowski, and we used to call him "Watch your coat and hat." We couldn't pronounce it.

[fol. 475] Mr. Hogan: Now, I feel badly, not having made a contribution myself, so as an Irishman, I will suggest "Pasquale."

The Referee: Yes.

Q. You referred to a doctor in the conversation. What doctor is that; "The doctor called"—would that be Dr. Sarubbi?

A. It could have been Dr. Sarubbi.

Q. Well, now, Judge Aurelio said, "The doctor is to take a train for Hot Springs."

A. Oh, yes. That is Dr. Sarubbi.

Q. And you replied, "That's the plan"?

A. Definitely, yes. Definitely Dr. Sarubbi.

Q. Now, there was a reference also to Joseph Loscalzo. Do you know anybody by that name?

A. Yes.

Q. And what position does he occupy?

A. He is an Assistant District Attorney in Queens County.

Q. How long have you known him?

A. Just a short time.

Q. Well, what do you mean by a short time?

A. Well, I would say about a year—seven or eight months, or a year.

Q. How many times have you seen him in that period?

A. A few times.

Q. What do you mean by a few?

A. Well, maybe three times or so.

Q. Not more than three?

A. Maybe four times. Not too many times.

Q. You played golf with him?

A. No.

Q. Where would you meet him?

A. I met him at the Pomenok Country Club.

[fol. 476] Q. That is a golf club?

A. Yes.

Q. But you didn't play with him?

Mr. Sheridan: Does he play golf.

Q. Senator Sheridan asks if you are a golf player?

A. I'm a hole-in-one man.

The Referee: I take it the answer is in the affirmative.

Q. Did you ever try to do anything for Loscalzo?

A. No, outside of an introduction to Mike Kennedy.

Mr. Sheridan: I think, your Honor, we ought to confine the locale of this to Manhattan, rather than Queens County. Joe was in the Assembly years ago when I was up there. He is a decent fellow.

Mr. Hogan: Well, your Honor, I think it bears on the question of influence.

Mr. Sheridan: All right. Go ahead. I will withdraw the objection. You can go ahead.

Q. What was the answer?

(Answer repeated by the stenographer as recorded.)

The Referee: There is no necessary reflection upon anyone here mentioned.

Mr. Sheridan: Your Honor, but it is so extremely difficult. We are right on the eve of election.

The Referee: I realize that.

[fol. 477] Mr. Sheridan: I am extremely anxious to have my client take the stand and tell his story.

The Referee: Well, we are going to, I am sure we are going to accomplish it.

Mr. Sheridan: I would like to have it restricted, so that we can do it in the next four or five days.

The Referee: I am sure that we will.

Mr. Hogan: Now, Senator, I haven't gone far afield, and I promise you I won't, and there will be ample time—

Mr. Sheridan: I assume you are going to point out all the good and bad qualities of this man.

Mr. Hogan: I haven't pointed out anything bad so far.

Mr. Sheridan: No.

Mr. Hogan: And I don't characterize it as bad.

Q. I believe the answer to the question was, was it not, Mr. Costello, that you introduced Mr. Loscalzo to Mr. Kennedy, is that true?

A. Through a telephone.

Q. Yes. You arranged for them to meet?

A. Yes.

Q. And you talked to Mr. Loscalzo?

A. Yes.

Q. On what subject?

A. Well, he came out to visit me at this country club, he told me he has never met Mike Kennedy, which would help him—he wanted some sort of advice, political advice; he had inspirations of running for County Judge or District Attorney—I just don't remember which.

Q. And very naturally he wanted to see the leader of the Democratic Party in New York County?

A. That's right.

Q. And discuss it with him?

A. That's right. So I called up Mr. Kennedy, and I told [fol. 478] him about Joe Loscalzo, "Would you meet him and give this fellow a little advice?" He says, "Sure, gladly."

Q. And they did meet?

A. And they did meet.

Q. I think that will do for Mr. Loscalzo. Oh, I beg your pardon. That was in what month, if you can recall, that you had this?

A. I just can't recall it right now.

Q. Well, was it before the conversation with Judge Aurelio?

A. Oh, much before.

Q. In the summertime?

A. Yes, yes, golf season, because it was at the golf club where he met him.

Q. Now, do you recall receiving a telephone call from Mr. Rosenthal also on the morning following the Judicial Convention?

A. Yes, sir.

Q. And what did Mr. Rosenthal say to you?

A. He wanted to see me.

Q. And did he thank you also?

A. Yes, he thanked me.

Q. Did he see you that day?

A. Yes.

Q. Did you make arrangements over the telephone?

A. To meet me—for him to meet me at my lawyer's office.

Q. This is August 24th, the day after the convention?

A. That's right.

Q. And who was your lawyer at that time?

A. Greenbaum, Wolff & Ernst.

Q. Mr. Ernst, wasn't it?

A. Ernst, yes.

Q. Morris Ernst?

A. Morris Ernst.

Q. And you met him at Mr. Ernst's office?

A. Yes.

Q. And what conversation did you have with Mr. Rosenthal at Mr. Ernst's office?

A. No conversation in particular.. From there we went to the restaurant.

Q. Oh, I see.

A. And we had lunch.

Q. What conversation did you have at lunch?

A. Well, he was tickled and what not to think that he is [fol. 479] the leader and he sponsored him, and it was a big thing for him to put Judge Aurelio on the ticket.

Q. Yes?

A. He says, "I appreciate the efforts you put in," and I believe he spoke about getting someone a job with Judge Aurelio—either an attendant or a secretary. I didn't pay much attention to that conversation at all.

Q. Did he mention the name of the person he had in mind?

A. No, I don't believe he did. If he did, I don't recall.

Q. What did he ask you to do, Mr. Costello, with respect to this?

A. I don't even remember if he asked me to intercede. All I know, that was his idea. I think that he was trying to get me to talk to Mike Kennedy or Judge Aurelio on someone for that position. I'm not positive, but I take it for granted that that was the meaning.

Q. And what did you say?

A. I didn't give him no encouragement at all. I didn't want to butt in. We just ate our lunch, and that was the end of it.

Q. What did you say with respect to Kennedy?

A. I don't recall.

Q. This was either secretary or attendant to Judge Aurelio?

A. Something, yes.

Q. That is not as a Magistrate but as a Supreme Court Judge?

A. Supreme Court.

Q. That's clear?

A. That's right.

Q. Now, you have no—do you—withdrawn. Did he ask you to seek Mr. Kennedy's approval?

A. Well, words to that effect, he might have. I didn't pay much attention to him. I wasn't interested to hear it, frankly speaking.

Q. Well, what did you say to him?

A. I don't remember what I said to him.

[fol. 480] Q. Well, now, I show you your Grand Jury testimony on page 432 where I marked it there (indicating).

A. Yes. I might have said that.

Q. That refreshes your recollection?

A. I might have said, if Kennedy approves it, it's all right with me, or something.

Q. If Kennedy approves, it's all right with you?

A. Yes.

Mr. Hogan: Your Honor, at this point I go to a new subject, and if it meets with your approval, and Senator Sheridan has no objection, I would like to discontinue at this time?

The Referee: We will take a recess until 2:00 o'clock.

(A recess was taken to 2:00 o'clock P. M.)

AFTERNOON SESSION.

The Referee: In respect to the hours, Mr. District Attorney and Senator, I suppose that you don't want to sit very late in the afternoon, if other things are equal?

Mr. Sheridan: Whatever you wish.

The Referee: Half past four?

Mr. Sheridan: Fine.

Mr. Hogan: That will be fine.

The Referee: Or until there is a break in the testimony within a few minutes after that.

Mr. Sheridan: And at about 3:30, if we are getting tired, we will take that five minute recess?

The Referee: Yes, that is all right.

[fol. 481] FRANK COSTELLO, a witness for the Petitioner, resumed the stand.

Direct examination.

By Mr. Hogan (Continued):

Q. Mr. Costello, you told us at the outset that you were in the slot machine business?

A. Well, vending machines.

Q. Yes.

A. Vending.

Q. Commonly called slot machine?

A. Slot machine.

Q. Did you operate in New York City at one time?

A. Yes, sir.

Q. When?

A. Well, on and off since 1928, I believe.

Q. 1928, until when?

A. On and off until about the latter part—the first part of 1934.

Q. 1928 to 1934. And under what name did you operate?

A. Midtown.

Q. Midtown what?

A. Mint Company.

Q. Wasn't it Midtown Novelty Company?

A. Well, mint and novelty, I just forget.

Q. Any other name?

A. True Mint.

Q. The True Mint Corporation?

A. That is right.

Q. And what relationship did the True Mint Corporation have to the Midtown Novelty Company?

A. Well, it was one, it was just a branch.

Q. Wasn't the True Mint the parent corporation?

A. The parent corporation, yes, sir.

Q. And the Midtown indicated that that company was—

A. Sort of a service station.

Q. And had that territory?

A. Yes.

Q. And who was interested in this business other than yourself; who was associated with you?

A. Philip Kastel.

Q. He is still associated with you, is he not?

A. Yes, sir.

[fol. 482] Q. Where was your office?

A. 1860 Broadway.

Q. What space did you have there?

A. I believe we had a few rooms, three or four rooms on the eleventh floor.

Q. Did you have any storage space also?

A. One or two rooms in the basement of the building.

Q. How many collectors did you employ?

Mr. Sheridan: Your Honor, I submit, does this refer back to 1934, nine years ago?

The Referee: It seems to.

Mr. Hogan: It is between 1928 and 1934, yes.

Mr. Sheridan: If it does, then I submit as to extensive examination as to the business conducted at that time the Court would almost take judicial notice of the Statute of Limitations. We are not held to a knowledge of that, nine years ago.

Mr. Hogan: Your Honor, I intend to go back to 1915 to show the type of man whose aid and influence—

Mr. Sheridan: That may be all right.

Mr. Hogan: —was sought and obtained.

Mr. Sheridan: Mr. Hogan, I don't think I have made the point of my objection clear. If we are going into details as to how he conducted his business, and where he had it and all of that, back in 1934, a period of nine years, I say it is an unfair presentation.

The Referee: Well, I supposed this is going to be connected up with the defendant?

Mr. Hogan: Yes, sir.

Mr. Sheridan: This man might have met him five times in his life, all within a period of a year.

[fol. 483] Mr. Hogan: This is connected with, I think it is paragraph sixth of the petition, your Honor, in which we set out a description of the activities of the witness, and his background. It is part of the proof, I submit.

The Referee: Paragraph which is it?

Mr. Hogan: Paragraph sixth, your Honor.

The Referee: Well, of course, I am in doubt as to how you expect to connect this up with the respondent.

Mr. Hogan: I think, your Honor, we have already demonstrated that the respondent and the witness were associated in the last six months. We have shown—

The Referee: You have shown the meetings, yes.

Mr. Hogan: Yes.

Mr. Sheridan: On five different occasions.

Mr. Hogan: Correct.

The Referee: How are you going to show any knowledge of such bad character on the part of the respondent? I suppose you expect to prove that in some circumstantial way.

Mr. Hogan: Exactly. I think facts will be adduced which will warrant the inference that the respondent had knowledge of this bad character, and we hope by questioning to adduce facts which will illustrate that character.

The Referee: Well now, I will receive this for the [fol. 484] time being, subject to a later motion to strike it out.

Mr. Hogan: Thank you.

The Referee: We will see how it develops. You cannot decide these things all at once.

Mr. Sheridan: No.

Mr. Hogan: Was the question answered, Mr. Stenographer?

Q. (Pending question was, "How many collectors did you employ?")

A. I don't recollect.

Q. Well, would you have any idea as to the number?

A. Well, I would say eight or ten were relatives of mine, and there might have been probably ten or twelve more; that would make around twenty.

Q. Did you have stores other than your office at 1860 Broadway?

A. We had one more branch in 27th Street.

Q. Didn't you have a branch on 116th Street also?

A. Well, I believe that is the True Mint.

Q. I see. Well then, there were three offices?

A. Three.

Q. And what were these stores used for?

A. Well, it was sort of a repair shop, and got night calls and day calls.

Q. How many machines were in operation?

A. Well, there might have been 500, 550 machines.

Q. Now did you furnish bail for those persons who were arrested?

A. Yes.

Q. Did you furnish lawyers?

A. Yes.

Q. Did you pay the fines assessed?

A. Yes.

Q. Did the storekeepers have the telephone number of the True Mint?

A. Yes.

[fol. 485] Q. Where was that, how did they get that?

A. Well, it was right on the machine.

Q. I see. Now did you have any private office at 1860 Broadway, in addition to the office of the Midtown?

A. Yes, I had an office.

Q. And on what floor was that?

A. I believe the tenth floor.

Q. And what did you use that office for?

A. Well, it was my own private office. At the time I was gambling.

Q. Yes. You used it for gambling?

A. Well, not used it for gambling, but to meet certain people that I had to pay off or collect.

Q. Was that the only use to which it was put?

A. That is the only use.

Q. Did you take bets there?

A. No, I never took bets.

Q. But you met people with whom you were gambling?

A. I gambled myself.

Q. Where did you have these slot machines; were they confined to Manhattan?

A. Well, at the time there probably were 7,000 or 8,000 slot machines throughout the five Boroughs, and I just had them separated, some in Nassau County and Manhattan, and a few in the Bronx.

Q. Your territory was not restricted?

A. No, I had 500 probably of the 7,000 or 8,000.

Q. Do you recall that there was a police raid in February of 1934?

A. Yes.

Q. How many of your machines were taken at that time?

A. Oh, I couldn't—I don't recall.

Q. Did you operate after that raid?

A. No, no.

Q. I show you a series of checks, 18 checks issued between the dates July 23rd, 1934 and October 25th, 1934. [fol. 486] You will note that they are made payable to your order.

A. What date? Will you repeat that question?

Q. July 23rd, 1934 and October 25th, 1934.

A. Yes.

Q. That was after you stopped the slot machine business?

A. Yes, that is right.

Q. And they are made payable to your order, are they not?

A. Yes.

Q. And they total about how much?

A. I don't know.

Q. Well, do you want to look through there? I think I have added them up, and they amount to \$40,000 but suppose you check it.

A. Well, I will have to—I will need pencil and paper. You have got 18 checks here.

Q. (Indicating) That is \$3,000, isn't it; \$6,000?

A. \$6,000.

Q. \$12,000?

A. \$12,000.

Q. \$13,000?

The Referee: Here is a pencil.

Mr. Hogan: I think we can do it.

Q. (Continued) \$14,500, \$20,500, \$21,500, \$24,000, \$26,000, \$27,500, \$28,500, \$29,000, \$30,000—

A. \$31,400.

Q. Yes. \$33,000, \$35,000, \$36,000, and four would be about \$40,000?

A. Yes.

Q. And where did that money come from?

A. These checks, Mr. Hogan, were accommodating—I was accommodated by Mr. Philip Kastel. I had no bank account.

Q. Yes.

A. And I was gambling at the time, and I used them as pay-offs. In other words, if I owed a certain individual \$2,000 or \$3,000 or \$500 and did not give him cash, I would give Mr. Kastel \$500 or \$1,500 and say, "Let me have a check," and he would deposit it and give me a check for it.

[fol. 487] Q. And then these checks would go to gamblers?

A. To individuals.

Q. Is that right?

A. Yes, that is right.

Q. And the endorsements on the reverse side of these checks are for the most part of bookmakers?

A. That is right.

Q. Well, after 1934 when did you next operate slot machines?

A. In Louisiana.

Q. And how did that come about? I will withdraw that question. When was it?

A. The early part of 1935.

Q. And what was the name of the company?

A. The Pelican.

Q. Pelican Novelty Company also?

A. Yes.

Q. Well, who asked you to operate in New Orleans, in Louisiana?

Mr. Sheridan: Now as I understand it, this slot machine or vending machine is legal, the same as Pari-Mutuel betting at the race tracks in New York, that is legal. Do we have to go into that inquiry?

The Referee: I am sure I don't know. I haven't any knowledge on the subject.

Mr. Hogan: I am bringing out the background of the witness, and if there is good in the background as well as bad, I would like to bring it out. If this can be construed as good, fine.

Mr. Sheridan: You don't intend that as good, do you, Mr. Hogan? A slot machine in New York is still legal.

Mr. Hogan: I am here to—

[fol. 488] The Referee: Just let Mr. Sheridan speak.

Mr. Hogan: I am sorry.

Mr. Sheridan: I understand, your Honor, that in the State of Louisiana this form of practice is legal, the same as Pari-Mutuel betting at our race tracks is legal. In the State of New York, as your Honor will take judicial notice, the State receives an income of about \$10,000,000 a year, and no matter what some people may think of race tracks and betting, it is legal in New

York at the tracks. These machines, vending machines, are legal in Louisiana. The point of my inquiry is, he has not practiced that in New York State, in this community, where people would be apt to know the nature and character of this business. We cannot be held to a strict accountability for anything this man may have done down in Louisiana. This respondent was a Magistrate in this City, he was an Assistant District Attorney.

The Referee: Certainly. I think that is largely so, but you are not going to devote any time to this, Mr. Hogan?

Mr. Hogan: I think we can cover it in short order, your Honor, and we offer it for what it is worth, to indicate what business this witness has been in.

The Referee: Well, he has now said that he operated the Pelican Corporation.

Mr. Hogan: The Pelican Novelty Company in 1935.

The Referee: In Louisiana in 1935.

[fol. 489] Q. And how did that come about?

Mr. Sheridan: I think that is incompetent, irrelevant and immaterial.

Mr. Hogan: I will withdraw it.

Q. Who was interested with you in the Pelican Novelty Company?

Mr. Sheridan: That is objected to. We are held to account for this man in and about New York. If there was any blackleg or good man or bad man in Louisiana, we have nothing to do with him.

The Referee: You are not going to show that it was anyone connected with the various matters which we have been hearing about this morning, are you?

Mr. Hogan: Your Honor, the answer is no. It is an associate of this witness, and I think his associates are very definitely matter of proof here.

The Referee: I will take the answer to this question.

Q. Who was associated with you in the Pelican Novelty Company?

A. Philip Kastel.

The Referee: That has already been shown, that he was associated with him in other business.

Q. Yes. You started in 1935. What were your profits in that year?

Mr. Sheridan: Now I think—all right, I will withdraw it.

[fol. 490] The Referee: Oh, I don't think we can go into that.

Mr. Sheridan: Go ahead, I will withdraw that objection.

The Referee: All right, the objection is withdrawn.

Mr. Sheridan: Surely.

The Referee: You may ask it. What were your profits that year?

The Witness: Right offhand, I would say \$60,000 or \$70,000.

Q. And in 1936 the same?

A. About the same, I would say.

Q. And how long did you continue operating the Pelican Novelty Company?

A. I think the early part of 1938 or the later part of 1937.

Q. Yes. What was your initial investment, by the way, Mr. Costello?

A. About \$15,000 or so, or \$20,000; I don't remember.

Q. You stopped operating in 1938?

A. The latter part of 1937 or early 1938.

Q. And did you resume after that, after 1938?

A. No.

Q. Well, aren't you in that business at the present time?

A. Yes.

Q. Well, when did you start up again?

A. The first of the year 1943.

Q. You were not in it in 1942?

A. No.

Q. Now will you explain how these machines are geared?

Mr. Sheridan: That may be very interesting from a scientific standpoint, but I don't think my client, a [fol. 491] little Magistrate in New York, is interested in how these things are geared.

Mr. Hogan: I don't think, your Honor, that—

The Referee: Are you going to show any knowledge on the part of Mr. Aurelio?

Mr. Hogan: I don't think, your Honor, that that is important here. We are interested—

The Referee: Do you want to show that these machines are operated in violation of law?

Mr. Hogan: No, I am simply going to show the type of the business this witness is in, and I think it is important to show.

The Referee: You have pretty well done that now, haven't you?

Mr. Hogan: Yes, but this, in my opinion, is an important fact in describing the type of business that it is; because when—

The Referee: Are you going to show the adjustability of these machines as to the amount of profits, or something of that sort?

Mr. Hogan: That is right.

Mr. Sheridan: I submit, your Honor, that we are not to be held accountable for that.

The Referee: No, you of course are not to be held to a knowledge of any such thing particularly, but on the general type of the business that the man was in, I think I will take it.

Q. Will you describe how the machines are geared, then, Mr. Costello?

A. Just what do you mean by geared, Mr. Hogan?

Q. Well, supposing a million dollars is put into the machines—

A. You mean what sort of a percentage we operate on? [fol. 492] Q. That is right, yes.

A. Well, I am not a mechanic, I am not an expert at it, but I would judge, through hearsay, about 18 per cent, 20 per cent.

Q. So that if a million dollars is played, the operators are bound to get \$200,000 back?

A. That is right.

Q. You cannot lose, can you?

A. That is right. No, no more than a mutuel track can lose, where they get 15 per cent.

Q. Is Seymour Weiss connected with this business?

A. No.

Q. Is he a friend of yours?

A. Yes.

Q. Has he been convicted of crime?

A. Yes.

Mr. Sheridan: If your Honor please, Seymour Weiss is a friend of Huey Long's down in New Orleans, and that happened to be brought in. Confine us to New York, any of these local politicians, but don't bring in Mr. Seymour Weiss.

The Referee: Aren't we going a long way from the seat of the inquiry here?

Mr. Hogan: Your Honor, you will observe that paragraph sixth sets out a number of things, among which are that Costello is an associate of well known gangsters, and other notorious gangsters and gunmen. Now I submit that I have a right to show that this witness does associate with criminals.

The Referee: Well, not as bearing upon his credibility. This is bearing on his character.

Mr. Hogan: No, to show the character of the witness, who had this influence.

The Referee: It is pretty remote, Mr. District Attorney. You have alleged certain people here.

Mr. Hogan: Yes, and I will reach them, too.

[fol. 493] The Referee: This man is not in any way mentioned here, is he?

Mr. Hogan: No, he is not. It says "and others", your Honor.

The Referee: "And other notorious gangsters and gunmen." Well, you would not propose to show that Mr. Weiss was a gunman, would you? You would not want to go into that?

Mr. Hogan: No, but he has a criminal record and is a friend of the witness.

Mr. Sheridan: And was a friend of a lot of men who were prominent in Louisiana.

Mr. Hogan: Surely.

The Referee: It is pretty remote. However, you may show that this man was a friend of Mr. Weiss, for what it is worth.

Q. What part do you play in this slot machine business? Do you go there at all?

Mr. Sheridan: Mr. Hogan, the eyes of the public are watching. Go on and ask about Mr. Weiss.

Mr. Hogan: No, I think that has been answered, Senator.

Mr. Sheridan: All right.

Q. Do you go to New Orleans?

The Witness: Did I answer the Mr. Weiss question, Mr. Hogan?

Mr. Hogan: I think you did. Well, if you did not, answer it now.

A. Yes, I know Mr. Weiss. He is the owner of the largest hotel in the south, the Roosevelt Hotel.

[fol. 494] Q. Has he been convicted of crime?

A. Convicted of a crime, yes.

Mr. Hogan: All right.

Mr. Sheridan: Would you mind asking him one question further?

Q. Do you know what crime?

A. Mail fraud, or something, I just don't know.

Q. Do you go to New Orleans to supervise the business?

A. Well, I go there on consultations.

Q. But Kastel really supervises it?

A. Yes.

Q. And Kastel had been convicted of crime, has he not?

A. Yes.

Q. I show you a picture and ask you if that is your business associate, Mr. Kastel (showing witness photograph)?

A. Yes, sir.

Mr. Hogan: I offer it in evidence.

Mr. Sheridan: I object to that.

The Referee: Let me look at the picture.

Mr. Sheridan: There is nothing in the record to show that Judge Aurelio knows Mr. Kastel.

Mr. Hogan: I submit, if your Honor please—

The Referee: I will withhold my ruling on that photograph, and see what more develops. We have it in that Mr. Kastel is an associate, a business associate over many years, of this witness, and that he has been convicted of crime. I don't think the photograph has anything, so I will not admit it at present. You may offer it later.

Mr. Hogan: All right.

[fol. 495] Q. Do you know what crime?

Mr. Sheridan: I object to that as not binding on my client unless they can show that he consorted with him, had knowledge of him.

The Referee: Are you going to show any relationship?

Mr. Hogan: No, but your Honor—

Mr. Sheridan: That is the question.

The Referee: I know the other point. It has bearing on this man.

Mr. Hogan: Definitely on this man, who has the influence, who was aiding this respondent, and to whom the respondent pledged his undying loyalty.

The Referee: I will let you show what the crime was of which Mr. Kastel was convicted.

Q. Do you know what crime he was convicted of?

A. I believe it was mail fraud.

Q. Now did you engage in any activity other than slot machines from 1931 to date?

A. From 1931 to date?

Q. Yes, in any other occupation? Well, haven't you referred to yourself as a commission broker?

A. Yes.

Q. What do you mean by that?

A. Well, down at the race track I have friends; they give me bets and I lay it off for them and get a percentage.

Q. Lay it off with whom?

A. Well, with certain bookmakers, or the machines.

Q. What?

A. Certain bookmakers.

Q. What bookmakers?

A. Well, we will say, if I have to answer the question, Owney Madden.

Q. Yes.

A. Sherman.

[fol. 496] Q. Frank Ericson?

A. Frank Ericson.

Q. What percentage do you get?

A. Five per cent.

Q. You know Frank Ericson very well, don't you?

A. Yes.

Q. Play golf with him?

A. Yes.

Q. He is a bookmaker?

A. Well, he was.

Q. Isn't he at the present time?

A. Not to my knowledge at the present time.

Q. Do you have an interest in his book?

A. No, sir.

Q. And you bet yourself on the races?

A. Bet myself. I was never a bookmaker in my life, just bet myself.

Q. Bet heavily?

A. Well, if you call it heavy, yes, at times, yes.

Q. As much as \$500 or \$1,000 a race?

A. I did that.

Q. Now were you in any other business since 1931, other than what you have described? Specifically, do you have any interest in a liquor distributing company?

A. No, sir.

Q. Do you own any interest in a distillery?

A. No, sir.

Q. You have no interest or ownership in any liquor distillery or company or agency?

A. No, sir.

Q. Did Judge Aurelio ever ask you if you were in the liquor business?

A. No, sir.

Q. And you never told him that you were?

A. No, sir.

Q. Or any branch of it?

A. No, sir.

Q. Did you ever tell Judge Aurelio that you were having trouble getting stuff over here?

A. No, sir.

Q. Did you ever tell Judge Aurelio that you were having difficulty getting hops in your liquor business?

A. No, sir.

Q. Did you ever keep it a secret that you were in the [fol. 497] slot machine business?

A. No, sir, it is perfectly legitimate.

Q. You have seen reference to it in the papers, haven't you?

A. Yes.

Q. You have seen references to yourself as King of the slot machines?

A. That is right; illegitimate in New York and legitimate in Louisiana, where I am operating.

Q. Do you have any other gambling interests recently?

A. In 1942.

Q. What was that?

A. Up in Saratoga. I had an interest in a Casino, a gambling casino.

Q. What was it called?

A. Piping Rock.

Q. Piping Rock Casino at Saratoga Springs?

A. That is right.

Q. And who were your partners in that gambling casino?

A. Well, to my knowledge there was a Jack Lansky.

Q. Is he related to Meyer Lansky?

A. I believe he is a brother.

Q. Yes.

A. Joe Adonis.

Q. Joe Adonis, from Brooklyn?

A. That is right.

Q. Anybody else?

A. And the one man that I did business with.

Q. Who is he?

A. I would like to tell the story my way, Mr. Hogan, if you don't object.

Q. I haven't any objection.

A. There is a Joe Stein which is a friend of mine, I have known him for years, which I consider very honorable. He came to me and gave me this proposition, that he had a lease on a Casino in Saratoga called the Piping Rock, would I undertake running it? I told him I was not interested, didn't have no time for it. A few days later he came to me and he [fol. 498] says, well, he had some people interested, he says, now, but they won't take 100 per cent of it. I says, "What have you got left?" He says thirty. I said, "Well, I will take the thirty per cent under one condition; I will finance my thirty per cent, but you will have to look after my interests, because I will probably never be up there." Being I trust the man, I gave him the money, and I have a thirty per cent interest.

Q. What were your profits for the season?

A. Oh, I would say from \$9,500 to \$10,500, I just don't recollect.

Q. Nine or ten thousand?

A. Yes.

Q. How long have you known Joe Adonis?

A. I know him around town for probably ten years.

Q. Do you know him as Adonis or Doto?

A. No, I know him as Adonis.

Q. Isn't his correct name Joseph Doto?

A. Well, I know him as Adonis.

Q. And where do you see him?

A. I see him at the race track, at a fight club, I mean in Madison Square Garden, or in a restaurant, cocktail bar. I see him around town, the way I see thousands of others.

Q. You have read about him in the newspapers, haven't you.

Mr. Sheridan: I object to it, your Honor, as no proof. If we are going to go into the shortcomings of each and every one of these men it will be definitely a smear.

The Referee: I don't believe we are.

Mr. Sheridan: Well, I hope not.

The Referee: They have alleged this particular man. [fol. 499] Mr. Sheridan: Yes, but I mean whatever Adonis did, Adonis may be the worst type, he may be the male Magdalene, he may be everything; I don't know.

Mr. Hogan: All I am contending, your Honor, is that this man associates with these people, and that I think is illustrative of his character.

Mr. Sheridan: All right, but to go into each and every man, his shortcomings, what he did and all of that—

Mr. Hogan: No, I am not going into—

The Referee: I don't think the District Attorney will take very long on this.

Mr. Hogan: No, I have a few questions. If the man admits he knew him and knows him well, then I think I am entitled to ask if he has a criminal record, and that is all. I am not going into the details of the criminal record, or anything else.

Q. You have read about him; haven't you?

A. Well, not as a criminal.

Q. Did you ever read of him as leader of the Brooklyn underworld?

Mr. Sheridan: Now you see, that is an unfair question.

Q. Did you or didn't you?

Mr. Sheridan: Now wait. Your Honor; I submit that is an unfair question.

The Referee: It doesn't make him so, but it does bear, if he was an associate of this man, and if he had that reputation.

[fol. 500] Mr. Sheridan: But to say that he was leader of the underworld, how can we meet proof of that kind?

The Referee: Of course, that is rather a large order.

Mr. Sheridan: That is a large order for any man.

The Referee: To be leader of the underworld for any City.

Mr. Hogan: I will withdraw it, your Honor.

Q. Going back a few years, did you know Arnold Rothstein?

A. Yes.

Mr. Sheridan: Now, your Honor, Arnold Rothstein was killed about 15 years ago, I think, when Joe Banton was District Attorney of New York, in 1928.

Mr. Hogan: This man was very close to Arnold Rothstein. I have a right to show that that was his association at that time.

The Referee: I will allow you to show in a general way that these men were associates of the witness.

Q. Now isn't it true that you were very close to Arnold Rothstein?

A. Yes.

Q. What was his business?

A. He owned a hotel, the Fairfield Hotel on 72nd Street, and the Rothmore Realty Company.

Q. Didn't you know him as a professional gambler?

A. And he gambled also.

Q. You had dealings with him, did you not?

A. Yes.

Q. You loaned him money?

A. To the extent—

[fol. 501] Mr. Sheridan: Your Honor, how can we meet all of this, as to whether he loaned money to a man who is dead fifteen years ago?

The Referee: Well, the District Attorney is attempting to show that this witness is a man of notorious character, and he is trying to show it out of his own mouth. Now if that reputation is notorious enough, I suppose that it might have some bearing on the knowledge that the respondent had. That is the general basis.

Mr. Hogan: That is the theory, your Honor, yes.

The Referee: Well, I will let him show it for what it is worth. We will see about it later.

Q. Did you loan him money?

A. Yes.

Q. Large sums?

A. Yes.

Q. What was your business at the time; where did you get the money?

A. I believe it was in 1928, I loaned that money, and I just stated my business.

Q. What was your business?

A. In the vending machine. True Mint Vend. I had at the time.

Q. Did you loan him money earlier than 1928?

A. Not to my recollection.

Q. What was your business in 1925?

A. 1925?

Q. Yes.

A. In 1925 I believe I was in the real estate business.

Q. You say that you got the money you loaned Arnold Rothstein from the slot machine business, is that right?

A. I didn't say where I got it from. You asked me—

Q. Where did you get it?

A. Well, I just don't remember. I might have had it for ten years, I don't know.

Q. Well, let me show you your Grand Jury testimony on that, at page 586 (showing witness volume)?

A. Yes.

[fol. 502] Q. Now where did you get it?

A. My testimony is there. I might have had it from a little bootlegging.

Q. You were in the bootlegging business, weren't you?

A. I was.

Q. You smuggled whiskey into the country, didn't you?

A. Yes.

Q. Where was your office?

A. 405 Lexington Avenue.

Q. Did you own trucks?

A. I believe we owned some trucks.

Q. Chartered boats?

A. Yes.

Q. And your income was pretty heavy in those years, wasn't it?

A. Well, it was profitable.

Q. Did you ever pay any State Income Tax in those years?

A. No, but I have paid it later.

Q. Well, when did you pay it?

A. Mr. Hogan, I think you have the record when I made my settlement, for all the back years.

Q. I will be glad to show it to you. I show you a copy of a letter written by an accounting firm to George M. Levy. Mr. Levy was your attorney at the time?

A. Yes, sir.

Q. And I ask if that refreshes your recollection as to the years?

A. From 1919 to 1932.

Q. Yes; you paid no State Tax from 1919 to 1932, is that right?

A. That is right, and paid them all in 1932.

Q. And what did it amount to? What is the total amount on which you paid tax (showing witness paper)?

A. Is this the total, 305, is that it? \$305,000.

Q. Did you pay any Federal Tax for those years?

[fol. 503] A. No, but I also made a settlement with the Federal Government.

Q. When did you make the settlement with the Federal Government?

A. In 1932.

Q. So that from 1919 to 1932 you made no tax payment to the Federal Government or to the State Government?

A. That is right.

Q. And you were in the bootlegging business in those years?

A. Yes.

Q. Were you associated with Bill Dwyer at that time?

A. No, sir.

Q. You know him?

A. Yes.

Q. You know he was convicted of bootlegging?

A. Yes.

Q. A friend of yours?

A. Well, to a certain extent, yes.

Mr. Sheridan: Your Honor, he says he did not associate with him or he did not have any business relations.

The Referee: I think he claims he did not have any business relation with him.

Mr. Sheridan: And I think the Court will take judicial notice that men engaged in the bootleg business did not make that one of notoriety, that they were secretive, that they were furtive, and they concealed their activities.

The Referee: That was so in many cases, of course.

Mr. Sheridan: Surely. I mean on the question of how anybody would find it out, I suppose that was the job of the Federal Government and the local District Attorney. They didn't charter boats in their own name, and they didn't advertise to the world at large, [fol. 504] that they were in the business, so we cannot be held accountable for that.

Mr. Hogan: That is argument, your Honor. I don't know how they operated; I am sure, but the fact remains that men were in the business, isn't that so, and it was illegal.

The Referee: I will let it stand for what it is worth. Merely knowing a person I don't think amounts to much, if anything.

Mr. Hogan: No. I think in most cases, your Honor, we will find that he associated with them.

The Referee: You have got to do more than that. You have got to have something more than association with malefactors.

Mr. Hogan: I agree with you.

Q. You were convicted in 1915?

A. Yes, sir.

Q. What was the charge?

A. The Sullivan Law.

Q. A gun charge?

A. Yes, sir.

Q. Were you sentenced to jail?

A. Yes, sir.

Q. How long did you remain in jail?

A. Ten months.

Q. That would be 1916?

A. Yes.

Q. How old were you at the time?

A. Nineteen or twenty years old.

Q. Nineteen or twenty. Since that time, 1916, have you done any work other than gambling, bootlegging and slot machines?

A. Yes.

Q. Well, suppose you tell us the work you have done in those 27 years?

The Referee: That was not a felony at that time, was it?

[fol. 505] Mr. Sheridan: A misdemeanor charge.

The Witness: A misdemeanor.

The Referee: It was a misdemeanor charge.

Mr. Sheridan: Possession.

The Referee: I did not hear. There is no question it was a misdemeanor charge?

Mr. Hogan: No question, your Honor.

Q. You were going to say that you had done some work between 1916 and 1943 other than gambling, bootlegging and slot machines?

A. Yes.

Q. What?

A. Well, I was associated with Harry Horowitz Novelty Company.

Q. What work did you do with the Novelty Company of Harry Horowitz?

A. It was a Novelty Company, sold fountain pens, fountain pencils—or pens, rather, and Kewpie dolls and razor blades.

Q. Yes.

A. Safety razors, and I worked in there. I packed, sold, acted as sort of a salesman.

Q. When was this?

A. Well, I would say from 1917 or 1918 until about 1920.

Q. Didn't you have a financial interest in this company?

A. Yes.

Q. How much?

A. I was associated; I had an interest in the company.

Q. How much money did you put into it?

A. Oh, I don't know; maybe \$400 or so.

Q. Is that all?

A. A small amount, yes.

Q. Well, weren't you in the liquor business at this time, the bootlegging business at this time?

A. No.

[fol. 506] Q. Well, where did you get this money that you put in there?

Mr. Sheridan: You mean this \$400?

Mr. Hogan: Whatever it was.

A. I probably borrowed it. I don't know if I had it. You are going back thirty years. I can't just remember where I got it.

Q. Don't you remember this question being asked and giving this answer:

"Q. And that money was obtained from bootlegging?

A. From gambling or bootlegging."

A. In the Horowitz?

Q. The question just before that is, "Q. That is the same Horowitz that was in the Dainties Company?" And the question before that is, "Now you were telling us about another company that you had an interest in, that made dolls, of some kind?"

A. Yes, that is that Horowitz.

Q. That is the same Horowitz that was in the Dainties Company?

A. Yes.

Q. How much money did you put in there?

A. I put some money in there, and I lost it.

Q. And that money was obtained from bootlegging?

A. From gambling or bootlegging.

Q. Gambling or bootlegging?

A. Yes."

Now did you give those answers before the Grand Jury?

A. Now just a second, Mr. Hogan. I might have misunderstood the questions, for the simple reason that we did not have prohibition until 1919, so I could not have got it in 1917 or 1918 in bootlegging.

Q. We had gambling—

A. (Interposing). I might have misunderstood the question.

[fol. 507] Q. We had gambling in 1917, didn't we?

A. I didn't get it in gambling.

Q. Then your testimony at the present time is that you did not get the money from gambling or bootlegging, is that true?

A. That is right.

Q. But you did have a financial interest there?

A. Yes.

Q. And did you do any work?

A. Yes.

Q. Now did you do any other work from 1916 to 1943?

A. Yes.

Q. Where?

A. Well, I was in business, I had the Koslor Realty Company.

Q. When was that?

A. I have no records here now; probably from 1922 to 1925.

Q. What did you do in that business?

A. Real estate.

Q. Weren't you in the bootlegging business in those years?

A. Yes; I did both.

Q. Did you sell any houses or lease any apartments?

A. Yes.

Q. How many transactions would you say you had?

A. Well, right offhand I can say that we had one transaction on 92nd Street and West End Avenue, and up in the Bronx we built some homes there; that is, five-story walk-ups; I had one or two big apartment houses.

Q. Where did you get the money to build those houses?

A. Well, I might have got that through bootlegging or gambling.

Q. All right. Now can you tell of anything else you have done in the last 27 years?

A. Then I was the president of the Babylon Waterfront Corporation.

Q. What money did you invest in that?

A. \$25,000 or \$30,000.

[fol. 508] Q. And where did you get that?

A. From the same source.

Q. Now how about the Dainties Products Co., early in the twenties; how much did you put into that?

A. About \$15,000 or \$20,000.

Q. And you got that from bootlegging and gambling also?

A. Either gambling or bootlegging.

Q. Do you have a bank account?

A. Mrs. Costello has one. I do my transactions through Mrs. Costello's bank account.

Q. You don't have one personally?

A. No.

Q. Now have you a friend, Willie Maretti, also known as Willie Moore?

A. Yes.

Q. How long have you known him?

A. 25 years or so, maybe more.

Q. You are very close to him, aren't you?

A. Yes.

Q. Very friendly?

A. Well, I know—yes, I am very friendly.

Q. See him often?

A. Very often.

Q. Do you know whether he has been convicted of crime?

A. Yes, he has been.

Q. I show you a picture. Is that a picture of Willie Moore (showing witness photograph)?

A. Yes, sir.

Mr. Hogan: I offer it in evidence, your Honor.

Mr. Sheridan: Same objection.

The Referee: Let me see it (examining picture). I will not receive it for the present. Mark it for identification.

(Photograph marked Petitioner's Exhibit 2 for identification.)

[fol. 509] Q. You call him at Hasbrouck Heights and Deal?

A. Yes, sir.

Q. And California, where he has been recently?

A. Yes, sir.

Q. And you see him in Hot Springs?

A. I believe just once in Hot Springs.

Q. Do you know what crime he was convicted of?

A. Right now I couldn't tell you.

Q. Wasn't he convicted of—

Mr. Sheridan: Mr. Hogan, are you testifying?

Mr. Hogan: Withdrawn. If you don't want it, all right.

Q. Do you know Ben Siegel, also known as Bugs Siegel?

A. Just an acquaintance.

Q. Well, how long do you know him?

A. Oh, I have seen him around for the past ten or twelve years.

Q. And isn't he associated with Meyer Lansky?

A. Not to my knowledge.

Q. You never heard Siegel and Lansky referred to as Bugs Meyer?

A. I read that in the newspapers, yes.

Q. How long do you know Lansky?

A. About the same time.

Q. Ten years?

A. About the same time as—

Q. And you see him often?

A. Yes.

Q. Where?

A. Well, I see him around restaurants, sporting events.

Q. Now do you know Abe Zwillman, known as Longey Zwillman, from Newark?

A. Slightly.

Q. How long have you known him?

A. Oh, seven or eight years.

Q. Yes. You see him in Hot Springs, don't you?

A. I believe I seen him once in Hot Springs.

[fol. 510] Q. Didn't he telephone you in Hot Springs?

A. Telephoning me is not seeing him there, Mr. Hogan.

Q. But in addition to seeing him, you testified you saw him once, didn't you?

A. Do you want me to answer the question if I seen him, first?

Q. I think you answered that you saw him once?

A. Once.

Q. Did he telephone you also at Hot Springs?

A. Not to my recollection.

Q. Did you seen him in New York?

A. Yes.

Q. You say you only know him slightly?

A. Well, he is an acquaintance, a very good acquaintance of mine.

Q. Well, I read you this question and answer from your Grand Jury testimony:

"Q. And you of course know Zwillman very well, don't you?

A. Yes."

Now was that the truth?

A. Well, if you call it well.

Q. No, I said very well, and you said, "Yes."

A. Well now, I would like to define the question of "Well," Mr. Hogan.

The Referee: He is asking you, you used the words yourself, as I understand it.

Mr. Hogan: No, he responded in the affirmative to my choice of words.

The Referee: Oh, he responded.

The Witness: Well, I would call it well. All right.

Q. Now you know Zwillman has been convicted of crime, don't you?

A. No.

[fol. 511] Q. Never heard that?

A. No.

Q. I show you a picture; is that a picture of Zwillman (showing witness photograph)?

A. That is his picture.

Mr. Hogan: Mark it for identification.

(Photograph marked Petitioner's Exhibit 3 for identification.)

Q. Do you know Longey Zwillman's associate, Jerry Catena?

A. Yes.

Q. How long do you know him?

A. Oh, I would say about three years, three or four years.

Q. Play golf with him, don't you?

A. Yes.

Q. Do you see him from time to time?

A. I play golf with him.

Q. And you see him in addition to that, don't you?

A. Well, yes.

Q. You know he has a criminal record?

A. Yes, I knew he had been convicted.

Q. Do you know what crime he was convicted of?

A. No.

Q. I show you a picture; can you identify it (showing witness photograph)?

A. Yes, sir.

Q. Who is that?

A. Jerry Catena.

Mr. Hogan: Kindly mark it for identification.

(The photograph was marked Petitioner's Exhibit 4 for identification.)

Q. Is he also known as Jerry Catena?

A. I only know him by Jerry.

[fol. 512] Q. That is the picture of the Jerry Catena you know?

A. Yes, that is the Jerry.

Q. Do you know Little Augie Persona, from Brooklyn?

A. Yes.

Q. How long have you known him?

A. About ten or twelve years.

Q. Do you see him at the Madison Hotel?

A. I see him at the Madison, I see him at the race track.

Q. What is his business?

A. I couldn't tell you.

Q. Gambler?

A. I couldn't tell you; I have seen him at the race track.

Q. Hasn't he been to your apartment?

A. I beg your pardon?

Q. Hasn't he been to your apartment?

A. No, no.

Q. How about Socks Lanza, is he a good friend of yours?

A. Yes, he is a friend of mine.

Q. How long have you known him?

A. Six or seven years.

Q. He has been to your apartment, hasn't he?

A. Yes.

Q. And you see him at places other than your apartment?

A. Well, I have seen him, yes.

Q. You have not seen him in the last few months?

A. That is right.

Q. And do you know whether or not he has been convicted of crime?

A. I know he had one conviction, as far as I knew; a Federal crime of some kind.

Q. Well, where is he now?

A. Now? Now he is convicted in the State.

Q. That is not on the Federal charge?

A. No, I knew of the conviction prior to that.

[fol. 513] Q. So you know he has been convicted in the Federal Courts?

A. That is right.

Q. And you know that at the present time he is in jail?

A. That is right.

Q. Do you know what he was convicted of this year?

Mr. Sheridan: I think, your Honor—

The Referee: Doesn't he say he doesn't know?

Mr. Sheridan: He does know he was convicted, but to go into the nature of the crime—

The Referee: Well, he doesn't know what he was convicted of.

Mr. Sheridan: Well, I mean, even if he did, unless you could tie it up with this respondent—

The Witness: (Examining photograph) This is Joe Lanza.

The Referee: In this particular case he does not know what he was convicted of, so there is not much use arguing about it.

Q. I show you a picture; do you recognize it?

A. Yes, sir.

Q. Who is it?

A. Joe Lanza.

Mr. Hogan: I offer it for identification.

(Photograph marked Petitioner's Exhibit 5 for identification.)

Q. Do you know Al Capone?

A. Slightly.

Q. How long have you known him?

A. Oh, probably a few years before he went to jail.

[fol. 514] Q. How long would you say, a few?

A. I would have to go back ten or twelve years.

Q. You knew him ten or twelve years?

A. I knew him a few years. He has been in jail ten years, so I could not have seen him since.

Q. Well, you knew him before he went to jail?

A. That is right.

Q. So you know him ten or twelve years?

A. I knew him from twelve years back.

Q. At least; and you know he was convicted of crime?

A. Yes.

Q. Where did you meet him?

A. Oh, I met him probably in Chicago, I cannot tell you the specific place; or maybe in Florida, maybe at a race track or somewhere.

Q. Do you know Johnnie Torrio?

A. No.

Q. Do you know Frank Nitti?

A. I know him slightly.

Q. Where did you meet him, Chicago?

A. I met him in Hot Springs, I met him in Florida.

Q. In Chicago?

A. I met him in Chicago.

Q. Wasn't he an associate of Capone?

A. Well, they were friends.

Q. Do you know Rocco Pompillio?

Mr. Sheridan: What is the last name?

Mr. Hogan: P-o-m-p-i-l-l-i-o.

Q. Do you know him?

A. I wouldn't know, unless you show me a photograph. I wouldn't know him by that name.

Q. Well, do you know that man (showing witness photograph)?

A. Yes.

[fol. 515] Q. What do you know him as?

A. I just knew him as Rocky.

Q. How long have you known him?

A. Oh, I knew him four or five years.

Mr. Hogan: I ask that it be marked for identification.

(The photograph was marked Petitioner's Exhibit 6 for identification.)

Q. You know him pretty well, don't you?

A. Yes.

Q. This Rocko, has he been convicted of crime?

A. Yes.

Q. Now, Joey Rao, from Harlem, do you know him?

A. Yes.

Q. How long have you known him?

A. Probably ten or twelve years.

Q. Has he been convicted of crime?

A. Yes.

The Referee: What is this man's name?

Mr. Hogan: Rao, J-o-e-y R-a-o.

Q. Is that Joey Rao (showing witness photograph)?

A. That is Joey Rao.

Mr. Hogan: Mark it for identification.

(The photograph was marked Petitioner's Exhibit 7 for identification.)

Q. George Uffner, do you know him?

A. Yes.

Q. You know him very well, don't you?

A. Yes.

Q. Play golf with him?

A. Yes.

[fol. 516] Q. See him at your apartment?

A. Yes.

Q. Has he been convicted of crime?

A. Yes.

Q. Do you gamble with him also?

A. Well, we golf.

Q. Don't you gamble, in addition to golfing (showing witness photograph)?

A. No, just golfing.

Q. Just golfing?

A. Yes.

Q. Is that Uffner (referring to photograph)?

A. Yes, sir.

Mr. Hogan: Mark it, please.

(Photograph marked Petitioner's Exhibit 8 for identification.)

Q. Do you recall this question and answer:

• "Q. Do you bet with him also?

A. Well, I do some betting with him, and we play golf."

Do you remember that, with respect to Uffner? Do you remember my asking you that question before the Grand Jury?

A. Well, I might have. Yes, now you refresh my mind, I might have bet with him, yes.

Q. You did bet with him?

A. Yes.

Q. Do you know Nick Rattini?

A. Yes.

Q. Do you know him by that name or another?

A. I just know him by Nicky.

Q. Nicky. Don't you know him by Nick Perry also?

A. Oh, yes, Nick Perry.

Q. You are vefy friendly with him, play golf with him, very friendly?

A. Yes.

Q. What is his business?

A. I don't know his business.

Q. How long have you known him?

A. A few years.

Q. Is that he (showing witness photograph)?

A. Yes.

Q. He has a criminal record?

A. Not that I knew of.

[fol. 517] Q. Did you ever hear he was in jail?

A. Well, I might have heard of it; not that I knew of it.

Q. You have heard that he was in jail, though?

A. Yes.

Mr. Hogan; Mark it, please, for identification.

(Photograph marked Petitioner's Exhibit 9 for identification.)

Q. Do you know Trigger Mike Coppolo?

A. I know Mike Coppolo, yes.

Mr. Sheridan: Your Honor—

Q. Did you ever hear him referred to—

Mr. Sheridan: Wait just a moment.

Mr. Hogan: I am sorry.

Mr. Sheridan: I object to the form of the question, Trigger Mike Coppolo. May we ask the name, and let the witness know if he is known under that name.

Q. Do you know Mike Coppolo?

A. Yes.

Q. Did you ever hear him referred to as Trigger Mike?

A. No.

Q. You never did?

A. No.

Q. Never read that in the newspaper?

A. No, not that I can remember.

Q. How long do you know him?

A. Six or seven years.

Q. Do you know that he is convicted of crime?

A. No.

Q. You don't know that?

A. No.

[fol. 518] Q. Are either of those two men Coppolo (showing witness photograph)?

A. Yes.

Q. Which one, the one on the left or the right?

A. This one here, which is on my left.

Mr. Hogan: On your left. Mark them both for identification.

(The photograph was marked Petitioner's Exhibit 10 for identification.)

Mr. Sheridan: May I see that, please (examining photograph).

Q. Do you know the person on the right hand side here (on Petitioner's Exhibit 10 for identification)?

A. Yes.

Q. Who is that?

A. Lepke.

Q. Also known as Louis Buckhalter?

A. That is right.

Q. How long have you known Lepke?

A. Slightly, probably ten years.

Q. And do you know that he has been convicted of crime?

A. Yes.

Q. Do you know Joe Baker?

A. Yes.

Q. He is a very good friend of yours?

A. No.

Q. Don't you see him frequently at the Madison?

A. I see him, he lives at the Madison Hotel. I don't go there to meet him.

Q. You see him often, don't you?

A. Around the Madison, when I go in there for a cocktail.

Q. I show you a picture; do you recognize it (showing witness photograph)?

A. Yes.

Q. Who is that?

A. Joe Baker.

Q. You know that he has been convicted of crime?

A. No.

Mr. Hogan: Mark it for identification, please.

(The photograph was marked Petitioner's Exhibit 11 for identification.)

Q. Now you know Lucky Luciano?

A. Yes.

Q. You knew him very well, didn't you?

A. Well, I knew him.

Q. How long have you known him?

A. Ten or twelve years.

Q. Wasn't he a pal of yours?

A. I would not call him a pal, no.

Q. Did you see him in Hot Springs, too?

A. Yes, I have seen him in Hot Springs.

Q. And you know he has been convicted of crime?

A. Yes.

Q. Is that his picture (showing witness photograph)?

A. Yes, sir.

Mr. Hogan: Mark it, please.

(Photograph marked Petitioner's Exhibit 12 for identification.)

Q. Now did you know Dutch Schultz?

A. Well, I knew him slightly. I have seen him around.

Q. You knew he had a criminal record?

A. Yes.

Q. You have been in his presence, haven't you? You have been with him to places?

A. No.

Q. Never been with Schultz?

A. No.

Q. Where would you meet him?

Q. A. Just like I met a thousand of other people; into a club, Madison Square Garden.

[fol. 520] Q. Did you know him?

A. Yes, I knew him. He would say hello, and I would say hello to him. I want you to understand, Mr. Hogan, that I never had any business or dealings with any one of these people, aside from ones I mentioned before; Joe Adonis and Kastel.

Q. But you associated with these people?

A. And I have a bank of real important friends of mine who I don't care to mention, also.

Q. Didn't some of these persons sit down at the table with you at the Madison Hotel?

A. Well, yes, they would sit down and have a drink.

Q. How about Louis Shomberg, alias Dutch Goldberg; do you know him?

A. No, I don't believe I know him.

Q. You don't believe you know him?

A. Well, show me the picture.

Q. I will show you the picture first, yes (handing witness photograph)†.

A. Yes, I know him.

Q. Do you know whether or not he has been convicted of crime?

A. Dutch Louis, or something, I didn't know his name. That is why I said I didn't know him.

Q. Do you know whether or not he has been convicted of crime?

A. No, I don't believe I do.

Q. Have you heard that he had a criminal record?

A. I don't recollect; I might have.

Q. I read you your Grand Jury testimony on that:

"Q. You have heard that he has a criminal record?

A. Yes."

Is that the truth?

A. Well now—yes, I might have.

Mr. Hogan: Mark this, please.

[fol. 521] (The photograph was marked Petitioner's Exhibit 13 for identification.)

Q. And Owney Madden, do you know him?

A. Yes.

Q. See him in Hot Springs?

A. He is a native of Hot Springs.

Q. Do you see him there?

A. Yes.

Q. You knew him when he was in New York also, didn't you?

A. Very slightly when he was in New York.

Q. How long have you known him?

A. When I say slightly, he was just an acquaintance.

Q. How long have you known him?

A. Oh, probably fifteen years.

Q. You know he has been convicted of crime?

A. Yes.

Q. Do you know Morris Zeig, known as Little Ziggy?

A. Slightly, yes.

Q. Anticipating Mr. Sheridan, have you ever heard him referred to as Ziggy?

A. Yes.

Mr. Sheridan: I don't mind "Ziggy", after "Trigger Mike."

Mr. Hogan: I thought maybe you might object to "Little."

Q. You have heard him referred to as Little Ziggy?

A. Ziggy, yes.

The Referee: What is his name?

Mr. Hogan: Morris Zeig, Z-e-i-g.

Q. And he was a friend of yours?

A. Just an acquaintance.

[fol. 522] Q. Do you know that he was convicted of a crime?

A. No.

Q. Never heard of that?

A. No.

Q. How about Patsy Dikes—he is a good friend of yours, isn't he?

A. Just a friend of mine, yes.

Q. Do you know he has been convicted of crime?

A. No.

Q. Never heard of that?

A. No.

Q. Do you know Vito Genovese?

A. No.

Q. Do you know Ciro Terranova—did you know him?

A. No, I didn't know him.

Q. You never knew him?

A. No.

Q. Tony Bender?

A. Yes.

Q. Do you know that he has been convicted of crime?

A. No.

Mr. Hogan: That is all your Honor.

The Referee: Take a short recess.

(Short recess.)

FRANK COSTELLO, resumed the stand:

The Referee: Anything further, Mr. District Attorney?

Mr. Hogan: No. No further questions.

The Referee: All right.

Cross examination.

By Mr. Sheridan:

Q. Now, Mr. Costello, I am going to ask you a few questions, not to pry into your personal affairs, but if they are [fol. 523] of a personal nature, please overlook. It's necessary. Have you during the last nine or ten years tried to conduct your life in a decent way?

A. Yes, sir.

Q. I mean, where do you live?

A. 115 Central Park West.

Q. Now, that is Central Park West. And you lived how long in that apartment?

A. About seven years in the same apartment.

Q. Then do you mind answering me this further question: What do you pay for your rent of that apartment?

A. About \$3600 a year.

Q. And about how many rooms does that apartment consist of?

A. Seven.

Q. Are you married?

A. Yes, sir.

Q. And you are married to the one wife all during your life?

A. Over 25 years.

Q. 25 years. And have you lived in that apartment for seven years?

A. Yes, sir.

Q. And did you live near there before that?

A. I've lived within a radius of two miles for about 47 years.

Q. Now, you lived also for eight years in another place, didn't you?

A. Yes, sir.

Q. Where was that?

A. 241 Central Park West.

Q. And I dare say, prior to the shortage of gasoline you had an automobile of your own?

A. Yes, sir.

Q. I see you are well tailored. Do you always dress that way?

A. Yes, sir.

Q. In other words, you are not parading into this court today dressed any differently than you would on any other day?

A. No, sir.

[fol. 524] Q. Your suits are tailored. And you meet people of refinement?

A. The best.

Q. The best?

A. Yes.

Q. And you have had business relationships with people of the best standing?

A. Well, I wouldn't call it business, but they are personal friends of mine, social friends of mine.

Q. Have you stayed at their homes?

A. And they stayed at my home.

Q. And have you had your wife in their company?

A. Yes.

Q. Now, how long have you known Judge Aurelio?

A. Since last February, I believe.

Q. Of this year?

A. Of this year.

Q. And the woman alongside of him—

Mr. Sheridan: Will you please stand up, Mrs. Aurelio?

(A woman stands in the court room.)

Q. How many times did you meet Judge Aurelio's wife?

A. I believe twice.

Q. In the company of other people?

A. Yes.

Q. Now, since 1934 have you been engaged in the slot machine business in New York State?

A. Since 1934?

Q. Yes.

The Referee: What year is that?

Mr. Sheridan: 1934.

The Referee: 1934?

Q. 1934. After 1934?

A. In the State of New York?

Q. Yes.

A. No, sir.

[fol. 525] Q. Your business activity was confined to the State of Louisiana?

A. Louisiana.

Q. And the list of names of men that were mentioned—did you ever have any business relationship with any of those men, other than the two you have mentioned?

A. No, sir.

Q. Did you ever have any business with this man Lepke?

A. No, sir.

Q. Did you ever have any business with this man that they call Gurrah?

A. No, sir.

Q. Now, you do go to the race tracks, don't you?

A. Very often.

Q. Both here and in Florida?

A. Florida and Louisiana.

Q. And Louisiana; and you meet people of all walks?

A. That's right.

Q. But as far as your own behavior during the last eight or nine years, has it been your ideal to try to mix with the better people?

A. Absolutely.

Q. I don't want you to make a confession, but tell me, what have your impulses been—to meet with the better people?

A. With the better. And I have met the better.

Q. And I dare say the income you derive from your business in Louisiana is a fairly substantial one, isn't it?

A. Yes, sir.

Q. And when you made a settlement of the income tax question, both the State and the Federal, you employed the firm of Greenbaum, Wolff & Ernst?

A. Yes, sir.

Q. That is Judge Greenbaum's old firm?

A. Yes, sir.

Q. And Mr. Morris Ernst was your attorney?

A. Yes, sir.

Q. Now—

A. I beg your pardon, I want to make one correction. [fol. 526] My State was represented by George Mortimer Levy.

Q. The Federal by Greenbaum, Wolff & Ernst—well, it is a matter of no moment.

A. No. George Mortimer Levy.

Q. Now, you say that you met Judge Aurelio in the year 1943, in or about the month of February?

A. Yes, sir.

Q. Now, during all this time that they speak of association with the Underworld, did you ever have any contact

with that man while he was a Magistrate of the Criminal Court of the City of New York?

A. Never knew him. Never knew the Judge in my life until February.

Q. As I understand it you met him through a doctor called Sarubbi, is that correct?

A. Yes, sir.

Q. And Dr. Sarubbi—that is not a nickname. He is a medical doctor?

A. He is a medical doctor, yes.

Q. And he is a graduate of Fordham University?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And he is an Assembly District leader in the lower part of the East Side of Manhattan?

A. Yes, sir.

Q. And he was the first man that spoke to you, to interest yourself in behalf of Judge Aurelio?

A. Yes, sir.

Q. Now, this man that they call Jimmy Kelly—he also is a district leader?

A. Yes, sir.

Q. On the Lower East Side. His correct name is Jimmy DiSalvio?

A. Yes, sir.

Q. Now, were you examined, both before the Grand Jury and privately, as to your full relationship with Judge Aurelio?

A. Not privately, but in the Grand Jury.

[fol. 527] Q. In the Grand Jury?

A. Yes, sir.

Q. And you told the truth?

A. Yes, sir.

Q. Of the different occasions, I think five in number all told, that you met him?

A. Yes, sir.

Q. Now, in answer to a question that was propounded to you by Mr. Hogan today, I understood you to say that you had given Judge Aurelio your private telephone number. So I understood you to say. Did Judge Aurelio ever

speaking to you during any time from February up until the morning that he called you on your private wire?

A. Never.

Mr. Sheridan: Your Honor, I take it that this man's private telephone wire was tapped for months prior to the day on which this telephone communication was gotten—

Mr. Hogan: I object to that, if it is in the form of a question.

Mr. Sheridan: Well, I ask for him then to produce to your Honor the order, when it was obtained, for the tapping of this man's wire, and the length of time—because I am going to use it later on for the purpose of showing that the first and the only occasion when Judge Aurelio phoned him was on the morning after he was nominated, because of a telephone call that took place the night before.

Mr. Hogan: I take it—

Mr. Sheridan: May I have the order?

Mr. Hogan: I take it this is not cross examination? [fol. 528] The Referee: No.

Mr. Sheridan: No, none of this is cross.

The Referee: Do you want to furnish the Senator with this order?

Mr. Hogan: I would be happy to. I don't know whether we have it with us, Senator, but I will be happy to produce it.

Mr. Sheridan: Before I finish?

Mr. Hogan: Oh, sure.

Q. Now, the night of the nomination, after he was nominated by the Democratic Organization, you telephoned Judge Aurelio at his home?

A. Yes, sir.

Q. And I take it Judge Aurelio's telephone is probably listed in the telephone book?

A. Yes, sir.

Q. Did you have a conversation with some woman who answered the phone, in which you said that you phoned—

left your name and number and asked to have the Judge phone you the following day?

A. Yes, sir.

Q. Now, is that the first telephone call that ever passed over that private wire to your apartment?

A. Yes, sir.

The Referee: Do you mean from Mr. Aurelio?

Q. From Mr. Aurelio to you?

A. Yes, sir.

The Referee: Judge Aurelio.

Q. So that as I understand it, from February 1943 up until August 23rd, or whatever date the Democratic Judicial Convention was held, he had never telephoned to you over that private wire?

A. No, sir.

Q. And you are sure about that?

A. Positive.

[fol. 529] Q. To briefly restate the times that you met, number one, in February 1943?

A. Yes, sir.

Q. In the Webster Hall at East 11th Street in Manhattan, the Lower East Side—a beef steak was held, which is a political function, is that correct?

A. Right.

Q. Jimmy Kelly's district, and you were introduced to Judge Aurelio on that night. You believe the man who introduced him was Dr. Sarubbi?

A. Yes, sir.

Q. His neighbor on the East Side?

A. That is right.

Q. And a Democratic leader. And you recall meeting Mr. Joseph Loscalzo?

A. Yes.

Q. He was there that night?

A. He was at the beef steak.

Q. I take it from the names that both of these men are of Italian extraction?

A. Yes, sir.

Q. Loscalzo is presently—

A. District Attorney.

Q. A political leader in Queens?

A. An Assistant District Attorney.

Q. And years ago was an Assembly man?

A. That is right.

Q. Now, the next time that you spoke to or met with Judge Aurelio was where? Was that the meeting up at Mr. Kennedy's or was it at this corn beef and cabbage affair that was held down there?

A. Well, I testified to that. Now, I want to get some notes on that because I—

Q. Well, there were five meetings?

A. That is right.

Q. Once at Webster Hall, at a beef steak?

A. Yes.

Q. Once in the same place they had a dinner that they called a corn beef and cabbage?

A. Yes. I met him there.

Q. And Congressman Kennedy—we will give him the title once in a while, in addition to "Mike"—Congressman Kennedy—

[fol. 530] Mr. Hogan: Senator, I haven't called him "Mike."

Mr. Sheridan: Oh—

Mr. Hogan: I am willing to give him all the titles that he has.

Q. (Continuing) Congressman Kennedy's office?

A. That is right.

Q. In General Motors Building?

A. That is right.

Q. The next time, in this Night Club, the Copablanca, is that it—

A. Copacabana. The Martinique—

Q. And the Martinique. Now, the Martinique—Lepke and Trigger Mike, Dodo, Feasy—all of these characters weren't with you, were they?

A. No.

Q. Or Little Nitti, Al Capone—none of them were with you, were they?

A. No, sir.

Q. Your wife, Surrogate Savarese of Queens County, is that right?

A. Yes, sir. Judge Savarese.

Q. And this woman (indicating)—Mrs. Aurelio—the Judge—these people were sitting down with you, weren't they?

A. The Judge, yes.

Q. And Congressman Kennedy and Clarence Neal and Bert Stand?

A. That's right.

Q. They had a drink at the bar?

A. That's right.

Q. And just to get an idea of your social standing, you had met these gentlemen just shortly before at the St. Regis Hotel at the Cocktail Bar?

A. The King Cole Room of the St. Regis.

Q. So that in the last eight or nine years, you were not conducting yourself like a rowdy-dowdy, or a plug-ugly type—you were carrying yourself with all the airs of refinement, weren't you?

A. Absolutely.

Q. And you tried to improve your standing?

A. Yes, sir.

[fol. 531] Q. Did you ever take Judge Aurelio and tell him of your past?

A. No.

Q. Did you ever sit down and tell him of any of these associates?

A. No, sir.

Q. Did you ever tell him that you had a participating interest in the Piping Rock gambling establishment?

A. No, sir.

Q. Did he know it?

A. No, not to my knowledge.

Q. And with all your influence that has been portrayed here, the question of the designation of a judicial candidate is the vote of 35 or more leaders, isn't it?

A. That is right.

Mr. Hogan: Now, your Honor, I don't think that is a question, I think the Senator is testifying.

Mr. Sheridan: All right. I will try to show it. All right.

Q. You do know under that processes of the Democratic form of government, political men do not live in a vacuum. You know that, don't you?

A. Yes, sir.

Q. They go out and they meet their neighbors, and we know, whether it is Democratic or Republican, whether it is Mr. Willkie or anybody else—there is such a thing as a pre-convention solicitation of help, don't you?

A. Yes, sir.

Mr. Hogan: I must object, your Honor, in that this witness has testified he has never voted in his life, he is not a member of a party, and I think it better come from another witness as to what persons in politics know.

The Referee: Well, he is interrogating him as an on-looker.

[fol. 532] Mr. Sheridan: An on-looker.

Mr. Hogan: Oh.

Q. So that I take it, whether you voted or not, you know the processes of the democratic form of government, don't you?

A. Yes, sir.

Q. In other words, that some years in the wisdom of political leaders it is well to take care of, let's say an Italian representation; right?

A. Yes, sir.

Q. And if you live in another part of the city, you have an eye towards the Polish contingent?

A. That's right.

Q. And another time you will take into consideration whether you will have a man of Jewish or of Irish extraction; and once in awhile whether a man is a protestant or a Catholic; you know that, do you?

A. Yes, sir.

Q. Now, Dr. Sarubbi interested you in behalf of Judge Aurelio?

A. Yes, sir.

Q. And I dare say these men told you something about him?

A. Told me he was probably the finest man around.

Q. He told you he had been—

A. A fine record; World War veteran.

Q. A veteran of the World War?

A. District Attorney.

Q. That he had the backing of past Commanders of the Foreign Wars; that he was a member of various societies—

Mr. Hogan: I beg your pardon; did he tell you that?

Q. Did he tell you those things?

A. He told me about the World War and he told me about the District Attorneyship and being a Magistrate.

Q. Did he tell you that Mayor LaGuardia—

[fol. 533] Mr. Sheridan: And I think the Court will take judicial notice that Mayor LaGuardia is not a Democrat—

Q. (Continuing) —reappointed Magistrate Aurelio at the termination?

A. Yes, sir.

Q. He told you that?

A. Yes, sir.

Q. And you did use your influence together with others—

A. That is right.

Q. —to try to help, in getting the nomination, is that right?

A. Yes, sir.

Q. But you don't think you're the man that solely and alone could bring the nomination about?

A. No, I don't think so.

Mr. Hogan: Objected to, your Honor, and I move to strike it out.

The Referee: I will strike it out.

Q. Well, did you speak to various district leaders?

A. Yes, sir.

Q. Let us see how many you spoke to of the 35. You spoke to Clarence Neal?

A. Yes, sir.

Q. You spoke to Dr. Paul Sarubbi?

A. Yes, sir.

Q. Number two. You spoke to Jimmy Kelly?

A. Yes, sir.

Q. Three. You spoke to Abe Rosenthal?

A. That's right.

Q. And, all important, you spoke to Congressman Kennedy?

A. Yes, sir.

Q. Now, did you speak to any other leaders?

A. No.

[fol. 534] Q. You spoke to Bert Stand?

A. Well, he's not a leader.

Q. No, but you spoke to him?

A. Yes.

Q. To put in a kind word?

A. Yes, I spoke to Bert Stand.

Q. And during that period, from February up to date, outside of those five occasions when you met Judge Aurelio, did you ever go out to night clubs with him other than that?

A. No, sir.

Q. Did you ever take him to gambling establishments?

A. No, sir.

Q. Did you ever take him and introduce him to Trigger Mike, or Lepke or Gurrah, or any of these people?

A. No, sir.

Q. Did he ever see you in their company?

A. No, sir.

Q. Did he ever go up to Saratoga Springs when you had this interest in this place up there?

A. No, sir.

Q. Did you ever see him at a race track in your life?

A. No, sir.

Q. Now, you are reluctant to give the names of what you call nice, decent people, that you met with socially during the last seven or eight years?

A. They are of the highest character.

Q. And you won't mention their names, will you?

A. And big utility men.

Q. And you wouldn't mention their names?

A. No, sir.

Q. And you told that to Mr. Hogan in his office, and you gave a full story off the record?

A. I don't remember. I don't know if I told Mr. Hogan that. But I want to make this statement—that I do know [fol. 535] some of the finest and biggest business men in the country, and I wouldn't mention names because I wouldn't want to embarrass them. I have been embarrassed enough. I try to lead a decent life. I gamble, but I never stole a nickel in my life, and my word is my bond.

Q. And when you say you met with these people, it wasn't a casual incidental meeting, but rather it was a friendship that maintained for years?

A. That's right; absolutely.

Q. Well, sir, if you don't want to disclose the names, I shan't press it. Did this man, Magistrate Aurelio, from February to date, ever meet any of those people that you mentioned, in your company?

A. No, sir.

Mr. Sheridan: Now, your Honor, I would like—

The Referee: I don't quite understand that question—

Mr. Sheridan: Well, the question is this—

(Last question and answer repeated by the stenographer as recorded.)

Q. I mean of the people on the seamy side of life, and the bad, black men?

A. I said, "No, sir."

Q. You never did?

A. No, sir.

Q. Never associated with them, is that correct?

A. Correct.

Mr. Hogan: What was that last question?

(Last question and answer repeated by the stenographer as recorded.)

Mr. Hogan: I don't think that is quite clear. Do you mean the witness didn't associate with them?

Mr. Sheridan: No.

[fol. 536] Q. Did Magistrate Aurelio ever associate with the list of men whose pictures were presented to you and you were asked if you knew that they had served a sentence?

A. No, sir.

Q. Now, in the last eight or nine years, have you been in business with any of those men?

A. No, sir, outside of one—that I have mentioned.

Q. The two men. And was it—I will ask you another question: You were interrogated about your activities back in bootlegging. You remember that, in 1920 and 1924, and 1925 and 1926?

A. Yes, sir.

Q. You were asked the questions, "Did you charter boats?" Do you remember that—by Mr. Hogan, he asked you.

A. Yes.

Q. Did you have trucks, did you smuggle liquor in, now that sufficient time has elapsed—do you mind telling me this: You didn't do that open and notorious?

A. No. I was just honest to say that I did, but—

Q. But you kept it quiet?

A. But I really didn't.

Q. But you kept it quiet, didn't you?

A. Yes, sir.

Q. You didn't go out telling everybody?

A. No. And I never chartered a boat.

Q. You never chartered a boat, and you brought in liquor?

A. I brought in liquor.

Q. And you sold liquor?

A. But I personally never did it.

Q. But you had no associations with this man back in 1915 (indicating)?

A. No, sir.

Q. Now, in 1915 or 1916 when you were sentenced to the Reformatory for possessing a gun, you didn't know any

member of his family, or had any association with Judge Aurelio at that time?

A. No.

[fol. 537] Q. I don't like to be constantly repeating, but had you ever met Judge Aurelio prior to February 1943?

A. Never met or saw the gentleman.

Q. Now, as far as Dr. Sarubbi is concerned—Dr. Sarubbi is a medical doctor, isn't that correct?

A. Yes, sir.

Q. He attended you as a physician?

A. Yes, sir.

Q. As a matter of fact, he sent you into St. Vincent's Hospital for an operation for your throat, is that correct?

A. That is right, yes, sir.

Q. And he has been your intimate friend over a period of four or five years?

A. Five or six years, yes.

Q. So that would it be fair to state that your interest, whatever it was, in Judge Aurelio, was first brought about through the intervention of, or help being asked of you from Dr. Sarubbi?

A. Yes, sir.

Mr. Sheridan: Mr. Hogan, will you have tomorrow the order for the tapping of this man's wire, and the date of that, so that I may continue?

Mr. Hogan: I think this is a copy, Senator—will you excuse me just a moment, Judge?

(Handing a paper to Mr. Sheridan.)

The Referee: Yes.

Q. How long have you had your private telephone listed under its present number?

A. On its present number?

Q. Yes. How long have you had a private telephone?

A. Always. Always.

Q. Well, now, on May 7, 1943, your private telephone is tapped. It is May 7, 1943.

Mr. Hogan: Well, Senator, why not offer the—

Mr. Sheridan: No, now, please—

[fol. 538] Mr. Hogan: Well, then it isn't in the form of a question, and I object.

Mr. Sheridan: Well, I am going to ask him the question.

Q. Prior to May 7, 1943—

Mr. Sheridan: Well, may I have a concession on the record that on May 7, 1943, an order was signed by Judge Jonah J. Goldstein, Judge of the Court of General Sessions, authorizing the District Attorney to tap the private telephone of this witness?

Mr. Hogan: So stipulated.

Mr. Sheridan: And may I ask further upon whose application that was made?

Mr. Hogan: No, I think not.

Mr. Sheridan: It is going to be important later on.

Mr. Hogan: I would be happy to say it was on the application or an affidavit of an assistant in my office.

Mr. Sheridan: That is all I wanted to know.

Mr. Hogan: But I don't think you—

Mr. Sheridan: That is all I want to know. You see, under the law, it may be done by a number of people. And is it further stipulated that it was upon an affidavit and an application of the District Attorney of New York County?

Mr. Hogan: That is right.

By Mr. Sheridan (Continuing):

Q. How long prior to May 7, 1943, did you have that [fol. 539] telephone in your house?

A. Since I have been living there.

Q. How long have you been living there?

A. Seven, eight years. Seven years, I believe.

Q. And did you have the same number?

A. No.

Q. How long did you have the number?

A. That number, I probably got that number about two years, I believe.

Q. All right. And outside of trips or visits that you

made to Florida in the winter, you spent the major part of your time at your apartment in New York?

A. At my apartment, yes.

Q. Is that correct?

A. Yes.

Q. You stated in answer to Mr. Hogan's questions that you were in some real estate business, is that correct?

A. Yes.

Q. You were also represented by the firm of Greenbaum, Wolff & Ernst, in some private business?

A. And still am.

Q. Did you have business with officials or men in the RCA Corporation? I am not going to ask the names.

A. Yes.

Q. Was that a business venture?

A. Yes.

Q. Did you also have business with reference to a photo-vision machine?

A. Yes, sir.

Q. And what is a photo-vision machine?

A. It was called a fono-vision.

Q. What is that?

A. It's a miniature moving picture machine. You insert a coin, and it plays with a picture, with either a short story or a dance or song.

Q. You were in that business?

A. Well, I made an investment in that business, yes.

[fol. 540] Q. And you also have been in the real estate business?

A. Yes, sir.

Q. I take it that during the last eight or nine years you were concerned with trying to create an outward appearance concerning yourself, weren't you?

A. Yes, sir.

Q. I mean, you lived at Central Park West and—

A. For 15 years.

Q. For 15 years. And you played golf?

A. Yes.

Q. Do you belong to a golf club?

A. Yes, sir.

Q. And what is the name of it?

A. Pomenok.

Q. A country club out in Long Island?

A. Yes.

Q. And you played with your friends out there?

A. Yes.

Q. If you had occasion to go to a hotel, you would go to the Waldorf-Astoria in New York?

A. I have been patronizing the Waldorf-Astoria for 20 years.

Q. That's a pretty good hotel in New York, isn't it?

A. Well, I think it is.

Q. And you go to the St. Regis?

A. Yes.

Q. And where is that located?

A. 5th Avenue and 55th Street.

Q. And do you have association with people of refinement and of standing?

A. Yes. The highest type.

Mr. Sheridan: Your Honor, may I make this statement? I can understand this man's position, in a case that has attracted so much attention—if he is reluctant about mentioning these people, I as the attorney for the respondent suggest that particular phase be heard in camera. I only limit it to this part, and his association [fol. 541] and his contact. It won't take long. Mr. Hogan, would you do that?

Mr. Hogan: I have no objection, your Honor.

Mr. Sheridan: Anything with reference to local affairs and local politics, no. But to spread upon the record names of decent men of standing in Washington and New York that this man has met and associated with—I am reluctant about it, and I think that that is reasonable and best. I spoke to this man the first time in my office Saturday, and he told me that he will not give it, and I shan't press it.

The Referee: Well, let us do it tomorrow morning.

Mr. Sheridan: Yes, we can do that then.

The Referee: Unless there is objection. We can do it in a few minutes tomorrow morning.

Mr. Hogan: Are you through, sir?

Mr. Sheridan: Yes, I am finished.

The Referee: Perhaps you could do it this afternoon before we adjourn.

Mr. Sheridan: Well, I don't want to press your Honor.

The Referee: Suppose you ask such questions as you want to on redirect on other matters and leave this rehabilitation, as you might call it—I mean by prominent associates.

Redirect examination.

By Mr. Hogan:

Q. Now, you testified that you have been going to the Waldorf for 20 years?

A. Yes, sir.

Q. And other hotels?

A. Yes, sir.

[fol. 542] Q. And that you have lived on Central Park West for the last 25 years?

A. That is right.

Q. So your habits haven't varied in that respect, have they?

A. That is right.

Q. They have been the same?

A. That is right.

Q. And you have testified that you meet the best type of people?

A. That is right.

Q. You know the worst too, don't you?

A. Yes.

Q. And you continue to see the worst, don't you?

A. Well, if they are unavoidable, yes.

Q. You haven't stopped seeing Adonis and Lanza and those people, have you?

A. Well, I don't look for them, Mr. Hogan. I have no business outside of that Saratoga business.

Q. Don't they telephone you?

A. Well, when you say do any telephoning, you will have to mention specific names. Who telephoned.

Q. Adonis?

A. No.

Q. Adonis doesn't telephone you?

A. No.

Q. Do you recall this question and answer—

Mr. Sheridan: Will you kindly submit the question to the witness?

Mr. Hogan: No. I think this is on impeachment.

Mr. Sheridan: Your own witness.

Mr. Hogan: That is right.

The Referee: He may impeach the witness by his sworn testimony.

Q. (Reading) "Q. Let me read you this conversation, July 23, 1943, Frank Costello to Joe Adonis.

"Adonis: Hello.

[fol. 543] "Costello: Hello, Joe, how are you?

"Adonis: OK.

"Costello: What are you doing today?

"Adonis: Nothing.

"Costello: Want to play some golf?

"Adonis: No. I can't play. Where are you going?

"Costello: Pomenok.

"Adonis: What time?

"Costello: We can kick it around, and I can talk to you.

"Adonis: I forgot. I have appointments.

"Costello: I've got to see you.

"Adonis: How about 4:30 or 5:00?

"Costello: That is OK. Over there?

"Adonis: Yes.

"Costello: OK, Joe."

Do you recall that conversation?

A. Yes. That conversation I recall.

Q. What did you have to see him about?

A. What year was that? What month was that?

Q. July of 1943. So it wasn't Piping Rock?

A. Well, I don't recall what I wanted to see him about.

Q. Well, you say here, "I've got to see you."

A. But I don't—

Q. You weren't avoiding him in July of 1943, were you?

A. No.

Q. You met him at the Madison during those months too, didn't you?

A. Yes.

Q. And you met Zwillman, didn't you?

A. I believe he has been at the Madison, yes.

[fol. 544] Q. And you met Meyer Lansky, didn't you?

A. Yes.

Q. And Socks Lanza was in your apartment before he went to jail, wasn't he?

A. Yes, sir.

Q. You met Augie Pissano in 1942 at the Madison Hotel?

A. Yes. It's a public place, and everybody goes in there.

Q. Do you recall testifying before the Grand Jury that you were with him for an hour on one day, and went to dinner with him?

A. Went to dinner with him?

Q. Yes.

A. I don't recall, but if I testified, I will admit I did.

Q. Yes, and you won't admit if you didn't testify.

A. Well, I just don't recall my testimony there.

Q. So that you haven't discontinued seeing these people, have you?

A. No.

Q. And you don't intend to, do you?

A. Well—

Mr. Sheridan: Oh well—

The Referee: Sustained.

Mr. Hogan: Withdrawn.

Q. Have you had any office since 1934 when you had one at 1860 Broadway?

A. No, outside of my office with the Phono Vision, that I made sort of an office.

Q. How long was that?

A. That is a few years back.

Q. Who makes these photo or phono vision machines?

A. Well, these phono vision machines, they are not made now, because they are out of business.

Q. Who made them a few years ago—Mills Novelty?

A. Mills.

Q. They make the slot machines too, don't they?

A. Yes.

[fol. 545] Q. Juke boxes also?

A. Yes.

Q. And your job is to place them at night clubs and roadhouses and gambling places, isn't it?

A. Place what?

Q. Place slot machines, and phono vision machines and juke boxes?

A. No, sir.

Q. Isn't that what you do?

A. No, sir.

Q. Isn't that your interest?

A. No, sir. Not no phono vision, because there is no such a company existing; and no juke boxes.

Q. Just slot machines?

A. Just a vending machine.

Q. How many times have you been to Louisiana since you started the business there?

A. I have been in Louisiana, since I started business there?

Q. How many times have you been down there?

A. Since 1935?

Q. Yes.

A. Well, I couldn't answer that question.

Q. Well, how many times a year do you have occasion to go there?

A. Two or three times a year.

Q. Now, you have testified on cross-examination that you spoke to Mrs. Aurelio some time or other.

A. No. I didn't testify to that. The telephone call you mean?

Q. Yes.

A. You have reference to the telephone call?

Q. Yes. How many times did you telephone Judge Aurelio?

A. That one particular time.

Q. What particular time?

A. On August 23rd.

Q. Didn't you testify earlier that you telephoned to invite him to the Martinique?

Mr. Sheridan: He said over his private wire, that private 'phone. That is what he said.

Mr. Hogan: I think you are helping him a bit, Senator.

[fol. 546] Mr. Sheridan: No, I am not. I asked him over that private 'phone.

Mr. Hogan: There was not any such testimony.

Q. Didn't you telephon Judge Aurelio to invite him to the Martinique?

A. Yes.

Q. And isn't that the only time you called Judge Aurelio's home?

A. Now that you are refreshing my memory, that is two times I called him. That one time, and that night of the—August 23rd.

Q. Are you quite certain about that?

A. That I can recall, yes.

Q. Do you recall being asked those questions before the Grand Jury?

A. Of how many times I have called him?

Q. Yes.

Mr. Sheridan: Your Honor, on that phase of it, the District Attorney has whatever telephone calls there were between May 23rd—I am willing in behalf of my client to have him put in evidence any call from this man to Judge Aurelio over that private wire, or from Judge Aurelio to him.

Mr. Hogan: Yes. Well, Senator, I don't have any.

Mr. Sheridan: That is the end of that. There is no longer a question of that. You have the messages that went over that wire.

Mr. Hogan: I don't have any call on the night of August 23rd, and that is what I am examining about.

[fol. 547] Mr. Sheridan: All right.

The Referee: Go ahead, Mr. District Attorney.

Q. Do you say at this time that you telephoned Judge Aurelio's apartment on the night of August 23rd?

A. Yes.

Q. Were you asked that question before the Grand Jury?

A. I don't believe so.

Q. Well, I will read you these questions—

Mr. Sheridan: Your Honor, I submit that regardless of what the witness testified before the Grand Jury, like on a question here, where they have the telephone conversations, each and every word, asking the witness, you are apt to create in the mind that maybe he might be guilty of perjury or something. It is no longer a question of speculation—

The Referee: Now, there is a chance for failure of memory.

Mr. Sheridan: But they have the intercepted—

The Referee: I know, but as to the witness, I think he may ask this. This is contradictory by his sworn testimony, I assume, of what he said on cross-examination.

Mr. Sheridan: But the point I make is, we are no longer in the realm of thinking or speculation. By my confession he has the absolute accurate questions on the telephone messages.

Mr. Hogan: Well, I accept the stipulation, Senator, and I tell you that I have no conversation from Mr. Costello to Judge Aurelio's apartment on August 23rd, the night of the convention.

[fol. 548] Mr. Sheridan: I don't say it came over his wire. All I say is that Judge Aurelio never used that man's private telephone until the morning after. Now, where he was—where this man was—

The Referee: That isn't contradicted. They are not contradicting that.

Mr. Sheridan: No.

The Referee: They are questioning this man as to the correctness or truthfulness, if you please, of the answer that he gave, that he telephoned the house of Judge Aurelio,—

Mr. Sheridan: Your Honor, maybe—

The Referee: Not the Judge himself, on the evening of the convention.

Mr. Sheridan: Your Honor, one of the issues we had to meet before the Bar Association, and before this, is that the fact that this man, Judge Aurelio, was in possession of the private telephone number of this witness, it showed that an intimacy existed between this man, the underworld character, and the Judge. That is the point.

The Referee: Yes. Well, I think I will allow the District Attorney to ask the question.

Q. I read from your Grand Jury testimony:

"Q. So that you called him on one occasion, and that was to invite him to the Martinique, and then you told him to bring Rosenthal with him?

A. That is right.

"Q. Now, did you ever speak to Mrs. Aurelio on the telephone?

A. I don't believe I did.

"Q. You didn't telephone Aurelio the night of the convention, did you?

A. I don't recall. I might have, but I just don't recall.

[fol. 549] "Q. Well, your best recollection is that you didn't, isn't that true?

A. At present, yes.

"Q. And you would recall it if you did, wouldn't you?

A. Well, I imagine I would."

Now, did you give those answers to those questions before the Grand Jury?

A. Well, of course my memory right now is more refreshed than the Grand Jury.

Q. Oh.

A. And I remember calling Judge Aurelio's home. I didn't speak to Mrs. Aurelio. It was a lady. It might have been Mrs. Aurelio.

Q. But you refreshed your recollection with respect to that, because I asked you the direct question, Mr. Costello.

A. In the Grand Jury Room?

Q. Yes.

A. Well—

Q. You couldn't remember it then?

A. Well, in three days time, Mr. Hogan, you go back; you start fishing. You go back. You get thinking.

Q. But you said your memory was refreshed. Who refreshed it?

A. Myself.

Q. You got to thinking about this?

A. That is right.

Q. And you recall you did?

A. That is right.

Q. Where were you that night?

A. What night?

Q. The night of the convention?

A. The night of the convention?

Q. Yes.

A. Well, I just don't remember where I was the night of the convention.

Q. What time did you make this call?

A. I made the call around 10:00 o'clock.

Q. 10:00 o'clock?

A. Yes.

Mr. Sheridan: Did you make it from your own apartment or outside?

[fol. 550]. The Witness: From my own apartment.

Q. From your own apartment?

A. Yes.

Q. But isn't it true that you gave Judge Aurelio your number, your private number, before the 23rd?

A. I believe I left my number there on the 23rd.

Q. That is not answering the question, whether you left your number or not, did you give your number to Judge Aurelio before the night of the convention?

A. No, I haven't.

Q. Didn't you testify earlier in the day you gave it some time before the Martinique? Didn't you so testify earlier in the day?

A. Well, it's before the Martinique.

Q. So you did give him your telephone number before the Martinique?

Mr. Sheridan: Well, when was the Martinique?

Mr. Hogan: The Martinique, it has been established was Thursday, August 19th, four days before the convention.

Q. Isn't that so, Mr. Costello?

A. Yes.

Q. Thursday, August 19th?

A. That's right.

Q. And you have testified that you gave the telephone number to Judge Aurelio before Thursday, August 19th, isn't that so?

A. I believe I did.

Q. It is the truth, isn't it?

A. Well, I believe I did, yes.

Q. And it's the truth, isn't it?

A. Yes.

Mr. Hogan: That is all.

[fol. 551] Recross examination.

By Mr. Sheridan:

Q. Now, when you say "I believe it is," and then my friend says, "And that is the truth," what do you mean by "believe?"

Mr. Hogan: Now, your Honor, he has testified this morning, and I refreshed his recollection as to the testimony.

Mr. Sheridan: All right.

The Referee: Now you have got both.

The Witness: Well, I—

The Referee: Wait a moment. You both succeeded, as I recall, of getting testimony here in answer to your questions, perfectly properly—one, that he had given it before, and two, that his recollection was that he didn't give it before.

Mr. Sheridan: So may I—

The Referee: Of course we can keep this going forever.

Mr. Sheridan: No, I just want—

The Referee: Well, I am going to give the District Attorney—

Mr. Sheridan: Another chance?

The Referee: The last word.

Mr. Sheridan: Oh, sure. He will have the last word.

The Referee: On this one.

Mr. Sheridan: Surely. It may not be necessary.

[fol. 552] Q. I dare say you as a witness here, when you are asked about what transpired, you are testifying to the best of your ability, isn't that right?

A. That is right.

Mr. Hogan: Now, your Honor, that is argument.

The Referee: Yes.

Mr. Hogan: I object to it.

The Referee: Yes, it is argument.

Mr. Sheridan: All right. All right.

Q. Did Judge Aurelio—

The Referee: Strike it out.

Q. (Continuing) —ever phone your apartment over that private wire from the first time you met him until that one telephone call?

A. No, sir.

Mr. Sheridan: And I take it, your Honor, further that there is no doubt about the truth of that or my friend would have produced another telephone conversation.

Mr. Hogan: Here, you have asked the question, Senator, and I don't think we ought to argue the point. I don't believe you should make a statement to the Court.

The Referee: You have had your answer.

Mr. Sheridan: All right.

Q. So when you say you phoned on the night of the nomination, where did you phone from?

A. I am almost sure it was from my home.

[fol. 553] Q. Well, are you certain about it?

A. Well, no. I'm not even certain about that.

Q. Can you place in your mind as to any other place where you may have phoned from?

A. I might have made it through a restaurant.

Q. But you did phone the apartment of Judge Aurelio at his home, and you spoke to some one, a lady?

A. A lady.

Q. You left your name?

A. Left my name.

Q. And your number?

A. For the Judge to call me in the morning.

Q. And the following morning—

A. He called me.

Q. A little after 8:00, he had that telephone call which we have heard?

A. That is right.

The Referee: How long do you think this testimony would take?

Mr. Sheridan: I think ten minutes. If you want to let it go until the morning—we have had a hard day—would you tell this witness, please, that when we take that information, that that will not be given to the public. He has got to make a full and fair disclosure. I am not his attorney. I met him Saturday for the first time.

The Referee: Well, you are his attorney in this proceeding. We will adjourn now until tomorrow morning at 10:00 o'clock, but the court room will be closed except to those immediately interested in this proceeding, and I will have to exclude the gentlemen of the Press too for these very few moments that it will [fol. 554] take—the idea being, as I understand it, that no names should be given out to the public accidentally, which might tend in any way—I don't say it would, but which might tend in any way—to besmirch the people mentioned. That is your idea, is it?

Mr. Sheridan: All right.

The Referee: And the District Attorney consents to that?

Mr. Hogan: Yes, your Honor.

The Referee: So that a few minutes after we have opened at 10:00 o'clock, we will open the doors. What time do you usually have it?

Mr. Sheridan: 10:30.

The Referee: Well, 10:30. A few minutes later we will let you all come back, or as many as want.

(An adjournment was taken until 10:30 A. M., Tuesday, October 26, 1943.)

• • •

October 26, 1943.

IN CAMERA.

FRANK COSTELLO, a witness for the Petitioner, resumed the stand.

Mr. Wolf: If your Honor please, I am Mr. Costello's attorney. I want to announce the fact. May I be present?

The Referee: Certainly. This is rather extraordinary, to exclude the public, but at the same time it was the request of Mr. Aurelio's counsel, and the District Attorney consented to it.

[fol. 555] Recross examination (Continued).

By Mr. Sheridan:

Q. Mr. Costello, yesterday afternoon as a witness you stated that you would not reveal the names of men and women with whom you have had social and business contact during the past years, and you stated your reason in open Court, and also last Saturday in my office, that you did not want to besmirch the names of people in no way connected with this case. Do you remember that?

A. Yes, sir.

Q. Now will you kindly tell me—or rather, will you kindly state to his Honor, briefly and concisely, the names of various people with whom you have had business and

social relations; and I assure you again that not one word of this testimony will nor can be revealed, and that there is no legal reason for you to persist in your refusal.

The Referee: Now Senator, it will have to be reported—

Mr. Sheridan: And may be reported in camera, too.

The Referee: Reported to the Appellate Division.

Mr. Sheridan: Yes.

The Referee: And it can be reported with a notation that the testimony has been taken in camera, with the consent of both parties, and with the suggestion on the part of the Referee that it be continued to be held confidential.

Mr. Sheridan: Yes. I have tried to explain that to this witness, but he told me no later than yesterday afternoon, in the presence of his lawyer, and again this morning; and I am in this unfortunate position: My client would like to have a full and complete story, [fol. 556] the good if there is any, rather than merely the seamy side of this man's life.

Mr. Wolf: May I make a statement, your Honor?

The Referee: Yes, very briefly.

Mr. Wolf: Very good. I was present in Senator Sheridan's office with the witness a few days ago, when the Senator questioned him regarding persons with whom he was acquainted and particularly fine, decent people. The witness told Senator Sheridan in my presence that he would not discuss the question with him, that he anticipated that his own name would be besmirched, and he would not permit the names of those people whom he respected and who respect him to be besmirched with him, and he told the Senator that he would not reveal the names of those people, and the Senator in my presence said that he would not question him about them.

I had the same talk with Mr. Gelb, of the District Attorney's office; I told Mr. Gelb of Mr. Costello's reluctance to name those persons, and Mr. Gelb told me that they would not press the question, that they would not go into that subject. I want to make that statement.

Last evening the witness left the stand, not knowing precisely what had transpired here. When he questioned me I told him that this proceeding was to be conducted in camera this morning. He was very much perturbed, and went with me to Senator Sheridan's office and repeated his position. To him, whether it is in camera or not, he takes the position that he would be revealing names of persons whom he respects and who respect him, and that to do that would be betraying the trust that he feels these people have in him. That [fol. 557] is the position he took. Of course, I feel that it is my duty to explain that to your Honor.

The Referee: Certainly I understand, and of course if the witness does not answer the question, whether he should be pressed will rest with counsel, not with the Referee.

Mr. Wolf: I understand that, your Honor; I understand.

By Mr. Sheridan:

Q. Now will you kindly give us the names of some of the people with whom you have had social and business contact?

A. I refuse to mention any names.

Q. Do you understand, Mr. Witness, that anything you testify here shall never at any time be revealed, and that you are doing it under a court process?

The Referee: Of course, that is a little extreme. We cannot control the Court.

Mr. Sheridan: All right.

The Referee: All that the Referee can do is to make a suggestion.

Mr. Sheridan: All right. Well then, I shall propound questions, the only way that I have.

The Referee: Well, do you propose to use the names yourself in the questions?

Mr. Sheridan: Names that he disclosed to me, at least in my office, last Saturday in the presence of his lawyer.

The Referee: Well, if the witness is not going to [fol. 558] answer, I don't think the names should be introduced by you, because it will not amount to any evidence.

Mr. Sheridan: No. Your Honor, I am in an unfortunate position, I assure you. Here we have a situation where his attorney and this man, in the presence of the District Attorney, off the record discussed these matters; they discussed them in my office, and I thought, as my duty to my client, that if this hearing was in camera, that then the man, knowing that there was the seal of privacy, might give us those names. If he was going to reveal any wrongdoing it would be different, but he takes the attitude that he has never had any wrongdoing with these decent people; that he has been to their homes, they have been to his, and that he has been on terms of intimacy with them. I, however, shall not press it, if your Honor says I am not to ask it.

The Referee: I don't think you should ask, I don't think you should bring the names in yourself.

Mr. Sheridan: Then all right.

The Referee: Is that your view, Mr. District Attorney?

Mr. Hogan: Yes, I certainly do not think the names should be included in a question.

The Referee: I don't think names should be included in the question which the witness will not answer.

Mr. Hogan: I am not suggesting that the Senator should not press the point, but he certainly should not attempt to put in names in that fashion, I think we all agree on that.

[fol. 559] The Referee: Of course, if the witness will answer—I suppose he can be instructed to answer, but I shall not instruct him to answer unless either of the counsel, or at least one of the counsel, requests it.

Mr. Sheridan: I think, your Honor, that—I tried to do it, really, and really I must say I don't know how to proceed.

The Referee: No one is questioning your good faith.

Mr. Sheridan: No. In other words, for me to propound questions which may be objected to as leading and so forth, if the man is not willing to tell; and I tried to do everything in my power to make him disclose the names.

Q. Could you tell us some of the names of these people?

A. No, sir.

Mr. Sheridan: Well then—

The Referee: Well, I suppose that closes this part of the matter.

Mr. Hogan: Senator, will you need this witness again?

Mr. Sheridan: Well, your Honor, may I ask this, that as to what has transpired here nothing should be stated in the press about this man's attitude or his refusal?

The Referee: I don't think anyone knows about it.

Mr. Sheridan: I don't think it should be disclosed by anyone afterward, that this man took this attitude. [fol. 560] The Referee: Well, of course, I cannot make a statement to that effect.

Mr. Sheridan: No, no, but I think your Honor should instruct the parties here.

Mr. Hogan: But your Honor, I don't we should limit the witness in stating that he gave no names, because otherwise the press will say that he gave names.

Mr. Sheridan: Oh, no, no. I think anything that transpired here has got the seal of privacy.

The Referee: Well, if you want it that way.

Mr. Sheridan: In other words, if we are going to state to the press that he took the stand and would not give names and would not do this, then the whole thing is meaningless.

Mr. Hogan: I do not press it one way or the other, Judge. It certainly will not be revealed by me.

(The last page of the transcript of Costello's testimony is not contained in the bound record.)

[fol. 561]

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1960

No. 59

FRANK COSTELLO, Petitioner;

v.

UNITED STATES OF AMERICA.

STIPULATION AND ADDITION TO RECORD—

Filed August 16, 1960

It is hereby stipulated by and between the parties to the above-captioned case that the printed record before this Court be amended by adding thereto pages 116a through 284a and 285a through 419a of the record filed in this Court by petitioner with his petition for a writ of certiorari in the case of *Costello v. United States*, No. 494, October Term 1957. These pages represent printed copies of Government's Exhibits 3 and 2, respectively, as admitted in evidence in this case by the trial court. Three copies of said record as used by the Court below in this case and certified by the Clerk of said Court are filed herewith.

/s/ Edward Bennett Williams, 1000 Hill Building,
Washington, D. C., Counsel for Petitioner.

/s/ J. Lee Rankin, Solicitor General, Department of
Justice, Washington 25, D. C.